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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. _____

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO.,
Petitioners

vs.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners Terminal Freight Cooperative Association and Terminal Freight Handling Co., charging parties before the National Labor Relations Board, seek a writ of certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit which dismissed petitioners' appeal by affirming the adverse judgment of the district court.

OPINIONS BELOW

The unreported order of the Court of Appeals affirming the judgment of the District Court is reproduced at A 148.

The unreported order of the District Court denying petitioners' motion to accept and consider their objections to the Stipulation previously approved by that Court, and for an order rescinding or amending such Stipulation, is reproduced at A 139.

JURISDICTION

The final order of the court below sought to be reviewed was entered on December 17, 1971.

The adverse ruling of the district court, from which petitioners sought review in the Court of Appeals, was entered on October 12, 1971.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Whether the courts below deprived charging parties before the National Labor Relations Board of rights guaranteed them in Section 10(l) of the National Labor Relations Act by refusing to accord them an evidentiary hearing on their objections to the remedial adequacy of a settlement of their meritorious charges which the Board's agents negotiated in lieu of securing the injunctive relief provided for in Section 10(l).

a) Whether charging parties, required to evaluate the remedial adequacy of settlements proposed by the Board's agents in lieu of the statutorily-afforded injunctive relief, may be denied information secured by the Board's investigation, not otherwise available to the charging par-

ties, concerning the scope and kind of unlawful conduct uncovered.

b) Whether a settlement of the charging parties' meritorious charges without affording the injunctive relief provided in Section 10(l) is remedially adequate or sufficiently protects the public interest when it fails to permit the charging parties, should the terms of the settlement be breached, unilaterally to move the district court to set that settlement aside and grant injunctive relief pursuant to the Regional Director's still pending injunctive petition.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151 *et seq.*, are set forth at A 149.

STATEMENT OF THE CASE

The facts which gave rise to this case (hereinafter referred to as "Solien IV") also gave rise to the Eighth Circuit's previous decisions in *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F. 2d 124 (CA 8, 1971), (hereinafter referred to as *"Solien I"*); *Terminal Freight Handling Co., et al.* v. *Solien*, 444 F. 2d 699 (CA 8, 1971), (hereinafter referred to as *"Solien II"*); and *Sears, Roebuck and Co., et al.* v. *Solien*, (Nos. 20,462, 20,472, CA 8, November 3, 1971), (hereinafter referred to as *"Solien III"*). The interrelationship among these matters can be seen from the facts (1) that the errors complained of here were committed in the same district court deliberations which, on review of a different part of the court's decision, became *Solien I;* and (2) the assertion of denied rights which underlies this appeal stems from the existence of guarantees which were articulated for this first time by the court below in *Solien II.* Thus, a resolution of this appeal requires the application of *Solien II* to those district court proceedings.

On June 10, 1970, Local 610, Miscellaneous Drivers and Helpers Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, commenced picketing the premises of Terminal Freight Cooperative Association and Terminal Freight Handling Company [1] and achieved a nearly total cessation of their business.

On June 12, 1970, Terminal filed an unfair labor practice charge (Case No. 14-CC-604) with Respondent Regional Director Solien against Local 610, charging that Union with engaging in an unlawful secondary boycott in violation of Section 8(b)(4)(i)(ii)(B) of the National Labor Relations Act. (A 11) More specifically, Terminal accused the Union, with which Terminal had no labor dispute, of unlawfully picketing their facilities in order to force them to cease doing business with Sears, Roebuck and Co. and other stranger members of the Cooperative Association. As the aggrieved victim of the described secondary boycott activity, Terminal also desired the protection of the relief specifically provided by Congress for such persons in Section 10(l) of the Act:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) . . . (B) . . . of section 8(b) . . . the preliminary investigation of such charge shall be made forthwith and given priority over all other

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[1] Petitioner Terminal Freight Cooperative Association is a non-profit shippers' association consisting of approximately forty independent companies which receives less-than-carload and less-than-truckload shipments, consolidates such shipments into carload lots in order to secure the advantages of lower costs through large volume shipment, and reships such goods to members' plants at locations throughout the United States. Petitioner Terminal Freight Handling Company is a non-profit Delaware corporation engaged in the handling, consolidation and tran-shipment of freight as manager of the Association at more than forty terminals throughout the United States.

For ease of reference, these petitioners jointly will be referred to as "Terminal" herein.

> cases . . . in the office where it is filed. . . . If, after such investigation the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition in a district court of the United States . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. . . ."

On June 16, 1970, the Regional Director concluded, as a consequence of his investigation of Terminal's charges, that he in fact had reasonable cause to believe the Union had committed the charged violations of law. Approximately two weeks later, on June 29, 1970, the Regional Director did finally petition the district court for injunctive relief (A 1); the Union had continued its unlawful picketing throughout the period of the Director's delay, resulting in substantial injury to Terminal.[2]

Throughout this period, the Director had carried on unilateral negotiations with the Union, resulting in a "Stipulation" which the Director's agents circulated to Terminal for its approval. (A 15). The Director and the Union intended this Stipulation to serve in lieu of the injunctive relief for which the Director had earlier petitioned. To the end of achieving such an informal agreed settlement in lieu of the injunction which Section 10(l) commanded the Director to seek, the Director failed to seek an order to show cause which would have resulted in a hearing on the petition which he had filed.

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[2] The propriety of the Director's extended delay in seeking injunctive relief, despite his previous conclusion that there did exist the requisite "reasonable cause", constituted, in part, the subject matter of *Solien II*.

Terminal,—believing that the remedial provisions of the Stipulation were inadequate and desiring an opportunity to influence its contents rather than merely to be unwilling recipients of such an informal, inadequate, privately negotiated, non-self-enforcing agreement,—on July 7, 1970, filed specific and detailed Objections to the proposed Stipulation in the district court in which the injunction petition was pending. (A 20, 23)

A hearing was conducted in the district court on July 7, 1970, in which (i) the Director sought the court's approval of the Stipulation in lieu of injunctive relief; (ii) Terminal argued its "Motion to Interdict Entry Of and Objections to Proposed Stipulation"; and (iii) Terminal sought an order granting it "party" status in the proceedings or, alternatively, leave to intervene.[3] (A 26)

On July 8, 1970, the district court disapproved the proffered Stipulation, also holding that Terminal did not constitute a party to the Section 10(l) proceedings and would not be allowed to intervene although it was permitted the exercise of certain lesser rights, including the right to be informed of all actions taken in the case and to be present by counsel at all hearings.[4] The court also set the matter for hearing, on its own motion, for July 15, 1970. (A 39)

However, on July 9, 1970, representatives of the Director and the Union proffered an amended Stipulation to the district court judge in his chambers. (A 41). The

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[3] Throughout the proceedings in the district court, Terminal was joined in its contentions by Sears, Roebuck and Co., also a charging party before the Board aggrieved by comparable conduct of the Union to that to which Terminal had been subjected. The decisions of the district court applied equally to Terminal and Sears.

[4] The district court's decision denying Terminal the right to participate as full parties-litigant or, alternatively, to intervene in the district court proceedings was appealed to the Eighth Circuit which, on March 12, 1971, affirmed the decision of the district court. (*Solien* I). A *writ of certiorari* was sought and was denied on July 7, 1971 (No. 1588, October Term 1970); reh. den., November 15, 1971.

judge approved that Stipulation without Terminal's presence, without any advance notice to them that such a meeting was to be held, without affording them an opportunity to participate in the drafting of the document, without curing the defects previously protested and without affording them an opportunity to state any further objections to it. Terminal learned of the meeting and the court's approval of the amended Stipulation only after those events had transpired. Moreover, the court's approval of that Stipulation had the effect of cancelling the scheduled hearing of July 15, preventing Terminal from filing prepared Interrogatories and from submitting evidence to the court, either in support of the Director's still pending petition for injunctive relief or for other relief which they deemed necessary to protect their vital and legitimate interests. Finally, the court's action violated its own order of July 8, which guaranteed Terminal the right to notice of all proceedings in the case and the right to participate therein, and violated their right, expressed in Section 10(l), to a hearing at which they could "appear by counsel and present any relevant testimony" in connection therewith.

On July 2, 1970, the Regional Director formalized his conclusion that the Union had committed the charged violations of law by issuing an administrative "Complaint and Notice of Hearing". (A 61). Instead of proceeding to a full hearing on its Complaint, the Board sought to dispose of the underlying case by means of a "Settlement Stipulation" purporting to remedy the charged unfair labor practices. (A 69). The charging parties (Terminal and Sears, Roebuck and Co.) opposed such a disposition of their charges on the grounds that they lacked sufficient information to judge whether all the substantive violations had been remedied, that they had not been afforded any opportunity to participate in the negotiation or drafting of this proposed settlement, and that the document lacked any findings of fact such as are required under Section 10(c) of the Act and without which it would be impossible

to determine whether any resumption of the Union's picketing would violate the presumed proscriptions of the settlement.[3] (A 81, 92, 97)

The Regional Director's approval of the Settlement Stipulation over the charging parties' objections was affirmed by the General Counsel on March 19, 1971. (A 88, 95, 127). Since that date, the matter has remained pending and unresolved before the Board. (A 130, 132, 133). Accordingly, there has been no "final adjudication of the Board" in this case which would terminate the relief guaranteed aggrieved charging parties under Section 10(l). Therefore, the only outstanding relief for the charged unfair labor practices in this case is that afforded or approved by the district court, on whose docket this case has remained—and still remains today—awaiting the Board's "final adjudication".

At the time of the district court's initial deliberations in this case, Terminal's participatory role was circumscribed by the will of the court. Terminal was held to lack the status of a party and the standing to intervene in proceedings arising under Section 10(l) and, as a presumed corollary, it lacked the right to seek review of adverse district court decisions. However, the Eighth Circuit's recent decision in *Solien II* effected a substantial change in this situation as it recognized Terminal's *right*, as a charging party, to an independent access to the district court in order to pursue a result opposed by every other person in the suit.

Terminal's dissatisfaction with the district court's treatment of its objections to the Stipulation approved there, as well as the level of participation permitted by the court, together with the newly-recognized *right* to a full hearing in the district courts on such objections, led to its filing on September 13, 1971 of a "Motion To

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[3] The charging parties sought to establish the validity of their opposition to the manner in which the Settlement Stipulation was arrived at, as well as to its contents, in *Solien III*.

Accept and Consider Their Objections To The Stipulation Previously Approved By The Court Herein and For an Order Rescinding or Amending Such Stipulation." (A 43)

Following the receipt of oppositions to that Motion from both the Director and the Union (A 52, 56), the district court, on October 12, 1971, denied Terminal's motion without explanation or comment. (A 139)

Terminal appealed the action of the district court on November 2, 1971 (A 140). In the Court of Appeals, both the Union and the Regional Director filed motions to dismiss. (A 142, 146). On December 17, 1971 the court entered an order granting the Union's motion and affirmed the judgment of the district court. (A 148). No reasons or other explanation for its decision were stated by the court.

REASONS FOR GRANTING THE WRIT

This case arises out of the same need to secure a judicial definition of charging parties' statutory rights under Section 10(l) as gave rise to *Solien I* and *Solien II*. Indeed, this case, Solien IV, is a consequence of the holdings of its predecessors. In Solien I this Court declined to review the Eighth Circuit's decision that charging parties do not constitute "parties" in district court proceedings arising under Section 10(l),—although this Court has twice before granted certiorari in cases raising the same or similar contentions only to hold them to be "moot" without reaching the merits.[6] In *Solien II*, currently before the Court on a Petition for Writ of Certiorari (No. 71-609), the Eighth Circuit recognized the existence of rights guaranteed to charging parties in Section 10(l) which are typically associated only with "party" status. Thus, despite the absence of such status, under the holding in *Solien I* charging parties appear to have the right, in district court proceedings under Sec-

[6] *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers*, 397 U.S. 655 (1970); *The Los Angeles Herald Examiner* v. *Kennedy*, 400 U.S. 3 (1970).

tion 10(l), to be present by counsel, examine and cross-examine witnesses, offer and respond to motions, introduce documentary or other relevant matter into evidence, and file briefs. Pursuant to the subsequent decision in *Solien II*, charging parties appear to have the additional rights to object to settlement of their cases when they deem the terms of the settlement to be remedially inadequate and independently to move the district court to set such a settlement aside and grant injunctive relief pursuant to the Director's pending injunction petition. The question then emerges as to the respect in which the exercisible rights of charging parties differ from those of "parties" generally; *Solien I* holds that they do, whereas the totality of described rights flowing from the two cases carries a contrary implication. The search for a definition of the rights which flow from Section 10(l), which characterizes all of the "Solien" cases, has perhaps been complicated by an unnecessary emphasis on labels. Whether charging parties' status in Section 10(l) suits should be described as that of a "party", or as something different or wholly new in the law, is itself immaterial except to the extent that the label describes a status which is understood generally. The failure to accord charging parties the status of "parties," together with courts' failure,—because of this primary emphasis on labels,—systematically to define the rights which do flow from the statute, has given rise to the confusion which has produced all the Solien cases and which has not as yet been resolved by them.

In the instant case, the petitioners' participation in the initial Section 10(l) proceedings was circumscribed by the unclear limits described in *Solien I*. Whether the holding in *Solien II* entitled them to a greater participation was the issue below. Its resolution by this Court, particularly in conjunction with the resolution of the issues posed in the pending Petition in *Solien II*, will eliminate the described confusion which has afflicted the area of charging parties' rights under Section 10(l).

A. Petitioner-Terminals' Participatory Rights Under Section 10(l) Were Significantly Enlarged by Solien II

In *Solien II*, the court below rendered a decision of first impression which recognized the right of charging parties to proceed unilaterally to a district court for the purpose of objecting to settlements or Stipulations which had been negotiated in lieu of injunctive relief under Section 10(l) of the National Labor Relations Act. In granting them the right to seek to overturn or amend such Stipulations, the court conferred upon charging parties a status or standing entitling them to be heard and imposed on the district courts a correlative duty to consider the views they express, neither of which had been judicially recognized at the time the district court originally approved the subject Stipulation in July, 1970.

Accordingly, in the Motion filed in the district court on September 13, 1971 to accept and consider objections to that Stipulation, Terminal exercised statutory rights which were not judicially articulated until *Solien II* issued on June 18, 1971. To the extent Terminal had previously urged objections to that Stipulation in the district court, it was not done under the umbrella of such statutory right and, similarly, the response of the court thereto was not governed by the existence of the specific statutory duty imposed by *Solien II*. Thus, the court below did not rule upon the merits of any of the objections previously made, which rulings, prior to *Solien II*, were presumably not considered by the lower court to be required. Yet such rulings are essential if, for example, charging parties are to be afforded an opportunity for the effective exercise of appellate review which the granting, in *Solien II*, of defined statutory rights in the district courts presupposes.

Therefore, Terminal sought in the Motion filed below, such a judicial response to its exercise of the rights granted in *Solien II*.

More specifically, at the time of the original proceedings in the district court, the measure of Terminal's rights was circumscribed by the court's conclusion that it was not a party and could not intervene. The level of its participation was a function of the court's reading of the language of Section 10(l) providing that charging parties "shall be given an opportunity to appear by counsel and present relevant testimony". Pursuant to that language, Terminal was allowed to file with the court written objections to the Board's proposed Stipulation, to appear in court to oppose the approval of the Stipulation and, by order of court, to be notified of all actions by the Board and the Union, to appear at hearings, to file briefs and advise the court of pertinent matters. However, immediately following the entry of that order, the Board and Union proposed an amended Stipulation to the court *without* notice to Terminal; a hearing was conducted in the judge's chambers *without* notice to Terminal and, hence, *without* its participation; the amended Stipulation was approved *without* affording Terminal an opportunity to state further objections or to file those briefs or other documents to which the court's order referred, and *without* affording Terminal the opportunity to present to the court relevant *factual* data which would support the objections which had previously been filed. No evidentiary hearing having been held, no facts were before the district court other than the conclusionary facts which were contained in the injunction petition. Additionally, no findings were made by the court, no rulings on the objections were issued and no record was made to facilitate appellate review.

Whatever disagreement Terminal had with these procedures, in the absence of "party" status or the right to intervene, or of a judicial holding that some statutory right had been breached, no recourse appeared available. Indeed, the absence of recourse was underscored by the Board's assertion, subsequently repeated and *rejected* in *Solien II*, that the determination as to when or whether injunctive relief should be sought under Section 10(l) was

within its unreviewable discretion as was the decision as to the contents of any compromise Stipulation.

When the court below rendered its decision in *Solien II* almost a year afterward, but while the challenged Stipulation remained in effect, the basis for such recourse appeared. In rejecting the Board's described assertion of unreviewable discretion and recognizing charging parties' statutory right to invoke, independently and unilaterally, the jurisdiction of the district court to protest inadequate settlements, the court, in effect, disapproved the procedures of the district court. The right to a judicial hearing cannot be satisfied by procedures which either exclude the beneficiary of that right from being present when his vital interests are adjudicated or which in any other manner limit his ability to present relevant facts or arguments.

Similarly, insofar as *Solien II* acknowledged the standing of charging parties, such as Terminal herein, to apply to the district courts for appropriate and adequate relief in proceedings under Section 10(l), it also by logical implication conferred standing to appeal those courts' adverse judgments. The recognition of an independent *right* to request appropriate relief in the district court carries with it the implication that an erroneous denial of that request by the court should be subject to appellate review. As long ago as this Court's decision in *Marbury* v. *Madison*, 1 Cranch (5 U.S.) 137, it was recognized that:

> "It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause."

Therefore, if the value of a right of access to the district courts is not to be nullified, and in conformity with the principle that appellate review is only an *extension* of the proceedings to be reviewed, the granted right to invoke the jurisdiction of the district court under Section 10(l) would appear to carry with it the right to seek review

of its decision.[7] Moreover, if the right to seek appellate review of such adverse district court decisions is added to the other rights which were either stated or implied in *Soliens I* and *II*, any distinction between the totality of such rights and those of a "party" becomes, at best, obscure.

Accordingly, *Solien II* established both that the level of participation permitted Terminal in the initial Section 10(1) proceedings represented less than their statutory entitlement and that they have standing to protest such a limitation both in the district court itself as well as in the appellate courts. The refusals of both the district court and the court below to entertain such protests were, therefore, erroneous.

B. Terminal's Objections To The Stipulation Approved By The District Court Involve Necessary Extensions Of Rights Granted In Section 10(l)

To the extent that the court below may have declined to reverse the district court's refusal to grant Terminal's Motion to accept and consider its objections on the ground either that Terminal lacked the right or standing to urge it or that the full consideration and participation sought had already been accorded, then the court was in error for reasons which have been stated above.

To the extent the court's unexplained decision may have been predicated upon the belief that Terminal's objections to the Stipulation lacked merit, it is contended that the court was similarly in error. The objections raised in the Motion describe respects in which the execution and

[7] Such a result is not inconsistent with the holding in *Solien I* that charging parties in Section 10(l) cases do not constitute "parties," even assuming that decision was correct. The right to seek appellate review has been granted to those who may not be "parties" to the proceeding, but whose substantial interests are adjudicated or affected therein. *Association of Data Processing Organizations, Inc.* v. *Camp*, 397 U.S. 150; *Barlow* v. *Collins*, 397 U.S. 159.

approval of the Stipulation resulted in improperly diminished protection of the interests required by Section 10(l) to be safeguarded as a result of the Director's conclusion that Terminal had been subjected to an unlawful secondary boycott.

1. *Absence of Information*

Neither Terminal nor the court below is now or has ever been armed with sufficient information to judge whether the Stipulation executed herein by counsel for the Regional Director and Respondent Union constitutes a full and adequate interim remedy for the violations of law which were uncovered by the Regional Director pursuant to the charges which were filed by Terminal. Evidence obtained from Respondent-Union's witnesses was not available to or discoverable by Terminal; no hearings were conducted in this case which would have revealed the full scope either of the Respondent-Union's unlawful activities or those of other unions which may have assisted the Respondent and thereby incurred the duty to remedy their own misconduct; and the Director at no time disclosed to Terminal the nature of the violative conduct which his investigation uncovered and which was purportedly remedied in the challenged Stipulation.

Since the right to object becomes meaningful only to the extent that charging parties possess sufficient facts to formulate intelligent and encompassing Objections, and since, in the absence of some disclosure by the Director of the nature and scope of his investigation, the full range of such facts was necessarily unknown to Terminal. Therefore, the failure of such disclosure constituted an insurmountable impediment to the exercise of the right, granted in *Solien II*, to frame objections in the district court.

Both the courts and Congress have been increasingly sympathetic to the proposition that those whose rights and interests are in legal jeopardy are entitled to the

fullest disclosure of facts which might aid them in their protection. In both *Leeds & Northrup Co.* v. *N. L. R. B.*, 357 F. 2d 527 (CA 3, 1966), and *Concrete Materials of Georgia, Inc.* v. *N. L. R. B.*, ___ F. 2d ___, 76 LRRM 2832 (CA 5, 1971), the courts held that charging parties before the Board are entitled to an *evidentiary* hearing on their objections to the Board's administrative settlement of their meritorious cases. In *Leeds & Northrup*, the entitlement was unlimited; in *Concrete Materials*, it was restricted to objections raising "material issues of disputed fact". In either event, the right to such hearings, with the attendant right, through cross-examination, for example, to secure the fullest record to support the charging parties' objections, evidences judicial concern for full factual disclosure. Moreover, the court's qualification, in *Concrete Materials*, that the objections raise "material issues of disputed fact" carries with it the natural implication that the charging parties are entitled to full factual disclosure by the Board in order to determine whether such a dispute exists.[8] Indeed, an awareness both of the beneficial consequences of full disclosure by governmental agencies and the need to assure it has found expression in the Freedom of Information Act, 5 U.S.C. Section 552 (Supp. II, 1965-66); 5 U.S.C. Section 552 (1970). This Congressional enactment, like the judicial decisions above, constitutes, at the very least, persuasive policy support for Objection 1. The recent decision in *Julius G. Getman, et al.* v. *N. L. R. B.*, ___ F. 2d ___ (No. 71-1097, CA DC, August 31, 1971), constitutes a judicial exclamation point

[8] In *Solien III*, the substantive issue raised by the charging parties involved their need for and entitlement to factual disclosure by the Board of the results of its investigation in cases initiated by their charges. That case sought a determination, *inter alia*, as to whether the Board's agents may settle an unfair labor practice case without making a fact disclosure to the charging parties of the product of its investigation, thus preventing those charging parties from making a full and informed assessment of the remedial value of the proffered settlement. The general principles urged by the charging parties in *Solien III* apply equally to proceedings under Section 10(l).

to this statement of policy as the court there made clear that the specific and limited exceptions to the Information Act are to be most narrowly construed.

Finally, no great burden would be imposed on the Board, its personnel or its processes by a requirement that it make the factual disclosure referred to in Terminal's Objection. Such a requirement does not presuppose an effort to discover inter-agency memoranda or other internal deliberations nor to examine the affidavits of any prospective witnesses nor even to be informed as to the identity of any such witnesses. Rather, the information which is needed to make the right to object meaningful consists only of (i) the evidentiary facts uncovered by the Director's investigation which support his belief that the law was violated, many of which facts could not otherwise be known by charging parties; (ii) those facts which were alleged by the charging parties which the Director does not believe to be true or relevant or verifiable; (iii) the theories upon which the Director proceeds; (iv) the relief which the Director seeks, as well as his reasons for refusing to seek other relief which the charging parties may have urged.

At present, charging parties such as Terminal are entitled, in the Board's view, only to that information which is found in the "Complaint" or the injunction petition filed by the Director, which consists of conclusionary facts and mere summary allegations that the law was violated. Terminal believes that informed and intelligent judgments as to the adequacy of proposed Stipulations cannot be made without a fuller disclosure of information without which charging parties would be unable to propose more appropriate, more reasonable and more useful alternatives or to formulate informed objections.

2. *The Limitation of Access to the District Court*

Terminal further objected to the Stipulation approved by the district court because it failed to recognize or to

confer upon Terminal the right unilaterally to move the district court, should the Respondent Union breach the terms of the Stipulation, to set that document aside and grant injunctive relief pursuant to the Director's previously filed and still pending petition. Rather, the exclusive right to move in such a situation was granted to the Board.

Under the terms of the Stipulation, as it was approved by the court, should the Respondent Union breach its commitments therein, Terminal was not permitted to bring this charge directly to the district court for expeditious hearing and resolution, but was required, instead, to bring the facts to the attention of the Board's Regional staff and thereafter to wait, without relief, (i) while the Region investigated the matter pursuant to a schedule of its own selection, (ii) engaged in an administrative decision-making procedure concerning the merits of the charges, (iii) obtained such authorization to proceed to the district court as it concluded was administratively necessary or advisable, (iv) secured affidavits to its satisfaction, and (v) then proceeded—*if* in *its* discretion *it* elected to do so—to the district court.

Accordingly, Terminal objected to the subject Stipulation since it imposed this wasteful and unnecessary procedure which substantially vitiated whatever protection against a resumption of unlawful picketing the Stipulation would otherwise afford. Moreover, this procedure constitutes a violation of Terminal's rights, as a charging party before the Board, as these rights were recognized in *Solien II*.

Since, as *Solien II* provides, charging parties may judicially challenge settlements which they deem to be inadequate, it follows that they should be accorded an equivalent right with respect to an adequate settlement which they believe has been breached. In such a situation, Congress' desire to afford protection to neutral employers subjected to unlawful strikes and boycotts requires that

they be permitted independent access to the district court for the purpose of urging the court to grant or reinstate an injunction as a consequence of the breach of the settlement agreement or Stipulation. Inasmuch as charging parties, through *Solien II*, have standing independently to invoke the process of the district court to urge the granting of the pending injunction petition when the picketing has ceased and the dispute centers only on the adequacy of the remedial provisions of the settlement, then, *a fortiori*, they should similarly be permitted to invoke those processes where the picketing has resumed in violation of the terms of the Director's attempted settlement.

The question of charging parties' right to do so is, moreover, of great practical importance.[9] For example, when such a breach occurs, the potential for injury is such that time is of the essence. However, to compel the charging parties to proceed through the inherently time-consuming offices of the Board assures delay, particularly where,—as often deliberately happens,—the breach occurs during periods when Board personnel, unlike district court judges, is unavailable to offer the needed assistance or cannot readily and expeditiously secure the needed administrative authorization to proceed.

The restriction of a charging party's direct access to the district court in the event of a resumption of picketing in favor of such an unfortunate and unnecessary procedure,—which the subject Stipulation now imposes,—is inconsistent both with the existence of the statutory rights

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[9] That importance is underscored by the fact that the number of unfair labor practice charges filed with the Board which allege conduct for which Section 10(l) affords an injunctive remedy is very large and constitutes an increasing percentage of the total charges filed. Thus, of the unfair labor practice charges filed against unions during the Board's fiscal year 1969, over 2100 charges, or 32%, involved alleged violations of Section 8(b)(4). This represents an increase of 13% over the 8(b)(4) charges filed in fiscal 1968. (*Thirty-fourth Annual Report of the National Labor Relations Board*, p. 13 (1969).)

recognized in *Solien II* [10] and with Congress' purpose that proceedings under Section 10(l) should guarantee the greatest protection from the violative conduct which that Section was designed to remedy. *Cf. Retail Clerks Union, Local 137* v. *Food Employers Council, Inc.*, 351 F.2d 525 (CA 9, 1965).

CONCLUSION

For the foregoing reasons, and in reliance upon the authorities cited, it is urged that the instant Petition for Writ of Certiorari be granted.

Respectfully submitted,

JERRY KRONENBERG,
MURRAY F. BAHM,
BOROVSKY, EHRLICH & KRONENBERG,
120 South LaSalle Street,
Chicago, Illinois 60603

GERALD TOCKMAN,
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1153 Pierre Laclede Building,
7701 Forsythe Boulevard,
St. Louis, Missouri 63105

Attorneys for Petitioners

---

[10] The court's language in *Solien II* recognizing charging parties' right to urge the district court to overturn a Board-negotiated settlement which "fails to adequately protect the public interest" is not limited to the period prior to the settlement's approval. Such "inadequacy" may result from the terms of the document itself or from conditions subsequent which render a once-adequate remedy now inadequate. A breach of the settlement or Stipulation is such a condition subsequent which compels a different and stronger form of relief in order "to adequately protect the public interest." A Stipulation, like that involved in the instant case, which expressly limits access to the district court in the event of a breach except to the Board, apparently violates the teaching of *Solien II* that, as a construction of the statute, such access is also available to charging parties.

Supreme Court, U.S.
FILED
JAN 14 1972
ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO.,
Petitioners,

vs.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents.

APPENDIX TO PETITION FOR CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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Exhibits (a) through (w), as follows:

(a) N.L.R.B. Charge Against Labor Organization in the matter of "Miscellaneous Drivers and Helpers Union, Local No. 610", Case No. 14-CC-604, dated July 2, 1970 (Exhibit (a) is attached to #2—Petition for Injunction) 9, 11

(b) Order Consolidating Cases, Complaint and Notice of Hearing in Cases Nos. 14-CC-603 and 14-CC-604, dated July 2, 1970 61

(j) Settlement Stipulation (executed by Respondent, Miscellaneous Drivers and Helpers, etc.) in Cases Nos. 14-CC-603 and 14-CC-604 69

(k) August 12, 1970 letter from attorneys for Terminal Freight Handling Company and Terminal Cooperative Association to Petitioner Joseph H. Solien, Regional Director 81

(n) September 29, 1970 letter from Petitioner Joseph H. Solien to Gerald Tockman, one of the attorneys for Terminal Freight Handling Company and Terminal Freight Cooperative Association 88

(p) October 6, 1970 letter from attorneys for Terminal Freight Handling Company and Terminal Freight Cooperative Association to Petitioner Joseph H. Solien 92

(q) October 14, 1970 letter from Petitioner Joseph H. Solien to attorneys for Terminal Freight Handling Company and Terminal Freight Cooperative Association 95

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(t) March 19, 1971 letter from General Counsel Arnold Ordman to attorneys for Charging Parties in re: Cases Nos. 14-CC-603 and 14-CC-604 127

(u) Motion of Charging Parties to Toll Time to File Further Statement in Support of Objections to Settlement Stipulation 130

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PETITION FOR INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

To the Honorable, the Judges of the United States District Court for the Eastern District of Missouri, Eastern Division

Comes now Joseph H. Solien, Regional Director of the Fourteenth Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended, (61 Stat. 149; 73 Stat. 544; 29 U. S. C. Sec. 160(1); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on a charge alleging that Respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. In support thereof, petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Fourteenth Region of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(1) of the Act.

3(a). On or about June 10, 1970, Sears, Roebuck and Co., (hereinafter called Sears) pursuant to the provisions of the Act, filed a charge with the Board alleging that Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization (hereinafter called Respondent), has been and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act. An amended charge was filed on June 23, 1970. Copies

of said charges are attached hereto as Exhibits 1 and 2, respectively, and made a part hereof.

(b) On or about June 12, 1970, Terminal Freight Cooperative Association (hereinafter called the Association), Terminal Freight Handling Company (hereinafter called Handling Company), and May Department Stores Company (hereinafter called May), pursuant to the provisions of the Act, filed a charge with the Board alleging that Respondent has been and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act. A copy of said charge is attached hereto as Exhibit 3 and made a part hereof.

4. The aforesaid charges were referred to Joseph H. Solien as Regional Director of the Fourteenth Region of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that complaints of the Board based on said charges should issue against Respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that Respondent is a labor organization within the meaning of Sections 2(5), 8(b) and 10(1) of the Act, and that said Respondent has been and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 300 South Grand Boulevard, St. Louis, Missouri, and, at all times material herein, has been and is engaged within

this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Sears is a corporation with an office and places of business in various states of the United States including the States of Missouri and Illinois, where it is engaged in the business of retail sales of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise. In the operation of its business Sears annually receives goods and merchandise in Missouri, directly from points outside the State of Missouri, valued in excess of 50,000, and annually receives goods and merchandise in Illinois, from points outside the State of Illinois, valued in excess of $50,000. Sears annually sells merchandise valued in excess of $500,000.

(d) Be-Rite Delivery Service, Inc., (herein called Be-Rite) is a corporation having offices and places of business at 1911 Locus and 1024 South Vandeventer in the City of St. Louis, and at 8950 Pershall, Hazelwood, all in the State of Missouri. Be-Rite is engaged in business as a delivery service, delivering goods, wares and merchandise for Sears and other persons in the Metropolitan Area of the City of St. Louis. In the course and conduct of its business operations, Be-Rite annually performs delivery services for Sears valued in excess of $50,000.

(e) Association is a non-profit shipper association consisting of 46 companies, including May, Boeing Company, Broadway-Hale Stores, North American Rockwell Corporation, Whirlpool Company, General Dynamics Corporation and Sears, which receives less-than-carload and less-than-truckload shipments, consolidates such shipments into carload lots and reships such goods to members' places of business at various locations throughout the United States. Members of the Association, individually and collectively, have annual gross sales in excess of $500,000, and each receives and ships goods valued at in

excess of $50,000, in interstate commerce throughout the several states of the United States.

(f) Handling Co. is a non-profit Delaware corporation engaged in the handling, consolidation and trans-shipment of freight as manager of the Association. It operates 36 terminal facilities in 24 states and the District of Columbia, including a terminal at 924 Cerre Street, in St. Louis, Missouri. It has annual receipts of more than $1 million derived from services supplied in connection with the movement of freight in interstate commerce.

(g) May is a retail department store enterprise. In the operation of its retail business May annually sells goods, wares and merchandise valued in excess of $1 million and in the same period purchases from suppliers located in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which were transported from said other states directly to May's facilities in the State of Missouri.

(h) At no time material herein has Respondent Union had any labor dispute with Sears, the Association, Handling Co. or May.

(i) At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

(j) Since on or about June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in subparagraph (i) above, has picketed at stores of Sears located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, at Sears' warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 409 Piasa in Alton, Illinois.

(k) Commencing on or about June 10, 1970, Respondent, in furtherance of its dispute with Be-Rite, picketed Association, Handling Co. and Sears in the vicinity of 924 Cerre Street, St. Louis, Missouri.

(l) As a result of Respondent's acts and conduct referred to in subparagraph (j) above, employees of Sears and employees of other persons in commerce or an industry affecting commerce, ceased working during the period such picketing was conducted and have refused to perform services for their respective employers.

(m) As a result of Respondent's acts and conduct referred to in subparagraph (k) above, employees of Association, Handling Co., May and other persons in commerce or in an industry affecting commerce ceased working during the time such picketing was conducted and have refused to perform services for their respective employers.

(n) By the acts and conduct set forth in subparagraphs (j) and (k) above, Respondent has engaged in and has induced and encouraged individuals employed by Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in an industry affecting commerce to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities or to perform services and has threatened, coerced and restrained Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in industries affecting commerce.

(o) Objects of the Acts and conduct of the Respondent set forth in subparagraphs (j) and (k) above were, and are: (1) to force or require the Association, the Handling Co., and other persons engaged in commerce or in an industry affecting commerce, to cease doing business with Sears; and (2) to force and require Sears to cease doing business with Be-Rite.

6. It may fairly be anticipated that, unless enjoined, Respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraphs (j) and (k), above, or similar or like acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. Is is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(l) thereof, that, pending final disposition of the matters involved herein pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

Wherefore, petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, pending the final disposition of the matters involved herein pending before the Board, from:

(a) picketing at or in the vicinity of Sears' retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears' warehouses at 895 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears' stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) picketing at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) in any manner or by any means including picketing, orders, directions, instructions, requests or appeals,

however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sears, the Association, Handling Co. and May or by any other person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threatening, coercing or restraining Sears, the Association, Handling Co. and May or any other person engaged in commerce or an industry affecting commerce where in either case an object thereof is to force or require Sears, the Association, Handling Co. and May or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite.

2. That upon return of said Order to Show Cause, the Court issue an Order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper in the premises.

Dated at Saint Louis, Missouri, this 29th day of June 1970.

/s/ Joseph H. Solien
Joseph H. Solien, Regional Director
National Labor Relations Board
Fourteenth Region

Arnold Ordman,
General Counsel,

Dominick L. Manoli,
Associate General Counsel,

Julius G. Serot,
Assistant General Counsel,

Gerald P. Fleischut,
Regional Attorney,

/s/ John S. Stevens
John S. Stevens, Attorney
National Labor Relations Board
1040 Boatmen's Bank Building
314 North roadway
St. Louis, Missouri 63102
MAin 2-4154

EXHIBIT 1.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 14-CC-603 Date Filed June 10, 1970

1. Name, Miscellaneous Drivers and Helpers Union, Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of	b. Union Representative to Contact William Knafel Business Representative	c. Phone No. 259-2558

d. Address (Street, city, State and ZIP code)
3535 South Grand Boulevard, St. Louis, Missouri 63103

2. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4) (i) and (ii) (B) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

3. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, and other pertinent matters)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced and encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., at the locations listed on the attachment, to cease using the services of Za-Rite Delivery Service, Inc., or to cease doing business with Za-Rite Delivery Service, Inc.

4. Name of Employer Za-Rite Delivery Service, Inc.	Office phone: 621-9522	
5. Location of Plant Involved (Street, city, State and ZIP code) West Market, St. Louis, Missouri 63103 6950 Bermuda, Maplewood, Missouri	1024 South Vandeventer, St. Louis, Missouri 63110	
6. Type of Establishment (Factory, mine, wholesaler, etc.) local delivery company	7. Identify Principal Product or Service transportation of goods	8. No. of Workers Employed 100

9. Name of Any Parent Company
Sears, Roebuck and Co.

9. Address of Any Parent Company (Street, city, State and ZIP code) 4,500 Northwest Plaza, St. Ann, Missouri	10. Employer Representative main office AX 1-1000

DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Attorney
(Signature of representative or person making charge) (Title or office held, if any)

Chicago Title and Trust Building,
111 West Washington Street
Address Chicago, Illinois 60602 Telephone number 312-641-0300 June 10, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

NLRB/15 [illegible]

Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(Air-Ride Delivery Service, Inc.)
Case No. 14-CC-603

June 10,

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3702 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1201 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8910 Parkdale, Manchester, Missouri

309 Plaza, Alton, Illinois

EXHIBIT 2.

Form Approved
Budget Bureau No. 44-R001.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE
Case No. 14-CC-493
Date Filed June 23, 1970

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of
b. Union Representative to Contact: Business Representative
c. Phone No.: 209-4[illegible]
d. Address (Street, city, State and ZIP code): 303 South Grand Boulevard, St. Louis, Missouri 63103

2. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) [illegible] of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

3. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., or the persons listed on the attachment, to cease using the services of De-Zite Delivery Service, Inc., or to cease doing business with De-Zite Delivery Service, Inc.

Since on or about June 19, 1970, the above-named labor organization, by its officers agents and representatives, has induced and encouraged individuals employed by Dependable Service Co. and Action Service Co., persons engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform work and to work on goods, articles and commodities, and has threatened, coerced and restrained persons engaged in commerce or in an industry affecting commerce where an object of all of this activity is to force or require Sears, Roebuck and Co. to cease using the services of De-Zite Delivery Service, Inc., or to cease doing business with De-Zite Delivery Service, Inc.

4. Name of Employer: De-Zite Delivery Service, Inc. — Office phone: 621-9322
5. Location of Plant Involved (Street, city, State and ZIP code): 1911 Locust, St. Louis, Missouri 63103; 9010 Marshall, Hazelwood, Missouri — 1024 South Vandeventer, St. Louis, Missouri 63110
6. Type of Establishment (Factory, mine, wholesaler, etc.): local delivery company
7. Identify Principal Product or Service: transportation of goods
8. No. of Workers Employed: 250
9. Full Name of Party Filing Charge: Sears, Roebuck and Co.
10. Address of Party Filing Charge (Street, city, State and ZIP code): 400 Northwest Plaza, St. Ann, Missouri
11. Telephone No.: AX 1-1000

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ D. J. Sullivan (Signature of representative or person making charge) — Attorney (Title or office, if any)

D. J. Sullivan
Address: 1503 Railway Exchange Bldg. St. Louis, Mo. 63101 — CE 1-5333 (Telephone number) — June 23, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

208

Miscellaneous Drivers and Helpers Union,
Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(Te-Rite Delivery Service, Inc.)
Case No. 14-CC-503

June 7

Attachment

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3708 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1001 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8950 Pershall, Hazelwood, Missouri

309 Piasa, Alton, Illinois

EXHIBIT 3.

FORM NLRB-508 (12-68)

Form Approved
Budget Bureau No. 64-R003.13

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CC-404

Date Filed 6-12-70

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Miscellaneous Drivers and Helpers Union, Local No. 610, a/w I.B. of T.C.W. & H. of A.	Wm. Knelst, Bus. Rep.	289-2550

d. Address (Street, city, State and ZIP code)
300 So. Grand Blvd., St. Louis, Missouri 63103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 4 (i) (ii) 5 (Enter Subsection(s)) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, places involved, dates, places, etc.)

See attachment A.

3. Name of Employer Terminal Freight Cooperative Association
Terminal Freight Handling Co.

4. Location of Plant Involved (Street, city, State and ZIP code)
924 Carre St. St. Louis, Missouri

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Warehouse	General Merchandise	5

8. Full Name of Party Filing Charge 1. Terminal Freight Cooperative Association and Terminal Freight Handling Company. 2. May Department Stores Co.

9. Address of Party Filing Charge (Street, city, State and ZIP code)
1. 924 Carre St. St. Louis, Missouri 63102
2. 6th and Clive Sts. St. Louis, Missouri 63102

10. Telephone No. CE 1-3151

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Jerry Kronenberg (Signature of representative or person making charge) Atty. (Title or office, if any)

Address 111 W. Washington Street, Chicago, Illinois 60602 312-236-8987 (Telephone number) 6/12/70 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 833-820

Attachment 1.

The above named labor organization and its agents, beginning on June 10, 1970, and continuing to the present, (1) have engaged in, induced and encouraged individuals employed by Terminal Freight Cooperative Association, Terminal Freight Handling Co., and Pine Transportation Co., persons engaged in commerce and in industries affecting commerce, and other persons so engaged, to engage in a strike or a refusal in the course of their employment to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities shipped to or intended to be shipped to or received by or intended to be received by Famous Barr Stores (a division of May Department Stores Co.), Boyd's Stores, American Biltrite Rubber Co., Venture Stores, Broadway-Pale Stores, City Products, Continental Can, Stix, Baer and Fuller, Thompson and Rogers, Inc., and Rohr Corp., all members of Terminal Freight Cooperative Association and other members of said Association, or to perform any services for such members; and (ii) have since June 10, 1970, and continuing to the present, threatened, restrained and restrained persons, including those named in (1) above, all of whom are or were engaged in commerce or in industries affecting commerce, with the object of forcing or requiring Terminal Freight Handling Co. and Pine Transportation Co. to cease using, handling, transporting or otherwise dealing in the products of Sears, Roebuck and Co. and of other producers, processors or manufacturers, including the persons named in (1) above, and to cease doing business with Sears, Roebuck and Co., and such other persons.

State of Missouri)
) ss
County of St. Louis)

I, Joseph H. Solien, being first duly sworn depose and say that I am Regional Director of the Fourteenth Region of the National Labor Relations Board; that I have read the foregoing petition and exhibit and know the contents thereof; that the statements therein made as upon the personal knowledge are true and those made as upon information and belief I believe to be true.

/s/ Joseph H. Solien
Joseph H. Solien

Subscribed and sworn to before me this day of

/s/. Paula A. Iacona
(SEAL) *Notary Public.*

My commission expires: October 31, 1973.

STIPULATION.

It Is Hereby Stipulated And Agreed by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that;

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Cooperative Association and Terminal Freight Handling Co. and May Department Stores Company in Case No. 14-CC-604, Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, (herein called Respondent) its officers, representatives, agents, servants, employees and all

members and persons acting in concert or participation with it will not:

(a) Picket at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picket at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however, given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal on the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce where in connection

with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the provisions of paragraph 1 of this Stipulation, the Court may, upon 24 hours notice to Respondent, forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection; Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

5. Nothing contained in this Stipulation shall be construed to make unlawful, where not otherwise unlawful, any primary picketing.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood

of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317(2) now pending before this Court.

Dated at St. Louis, Missouri, this ____ day of July 1970.

John S. Stevens,
Attorney for Petitioner.

_____
Attorney for Respondent.

Approved and so ordered this ____ day of _____, 1970.

_____
United States District Judge.

ORDER GRANTING TEMPORARY INJUNCTION.

A verified petition of Joseph H. Solien, Regional Director for the Fourteenth Region of the National Labor Relations Board (herein called the Board), for and on behalf of said Board, for a temporary injunction, pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the said Board with respect to the matters involved therein, having been filed herein on June 29, 1970, and a Stipulation dated _____, having been entered into by Plaintiff and Defendant providing for the entry of a temporary injunction upon the occurrences of certain contingencies described therein and an affidavit by the Regional Director of the Fourteenth Region of the Board, dated _____, having been filed pursuant to said Stipulation, and notice thereupon having been given to Respondent, it is, upon said Stipulation, affidavit, and the entire record herein.

Ordered, Adjudged, and Decreed that, pending the final disposition of the matters involved pending before the

National Labor Relations Board, Respondent miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it, be and they hereby are, enjoined and restrained from:

(a) Picketing at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picketing at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any

means threatening, coercing or restraining Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.; provided, however, that nothing in this Order shall be construed to make unlawful, where not otherwise unlawful, any primary picketing.

Done at Saint Louis, Missouri, this day of , 1970.

United States District Judge.

OBJECTIONS TO PROPOSED STIPULATION.

Sears, Roebuck and Co. ("Sears"), charging party in the underlying Board proceedings, and maintaining that it is a proper party to this suit, herewith files objections to the proposed stipulation being submitted to the Court for its approval herein.

Objection 1. The format of the proposed stipulation is an agreement between counsel for the government and counsel for the respondent union. No provision is made for Sears to be a party to the stipulation. There is no place on the signature page for Sears to sign, by counsel or otherwise. Sears' position is that it is a proper party to this suit, for reasons already explained to the Court;

and that therefore, it is a necessary party to any proposed stipulation undertaking to dispose of the suit.

Objection 2. In Paragraph 1(a), (b), (c), there is no provision for the respondent union's agreeing to dissolve and cancel the conspiracy it has entered into with Teamsters Locals 600, 618, 688 and others to cause secondary work stoppages among Sears' employees in furtherance of its dispute with Be-Rite, a different employer. Nor does the proposed order granting temporary injunction provide for this. The evidence would demonstrate that such a conspiracy does exist and, to remedy the violations that have occured, this conspiracy should be dissolved and cancelled.

Objection 3. The stipulation does not provide for the entry of a temporary injunction now, but involves the withholding of injunctive relief unless and until a breach of the stipulation has occurred. We submit that the stipulation should provide for the immediate entry of a temporary injunction, in view of the serious violations of the act which have occurred.

Objection 4. Under Paragraph 2 of the proposed stipulation breaches of the provisions of the stipulation can be brought to the attention of the Court only after investigation by the Regional Director, and only the Regional Director may apply for prompt injunctive relief. Aside from its contention that an injunction should be entered now, by consent, Sears maintains that if it is of the belief that the stipulation is being violated, it should have prompt access to the Court to secure injunctive relief without delay. If Sears is a party to the suit, it should have access to the Court in this connection, and standing to pray for relief. The history of this whole matter demonstrates how unsatisfactory the procedure is when the charging party is obliged to await the deliberations of the Regional Office of the Board before access can be had to this Court.

Moreover, the wording of Paragraph 2 is vague and could not help but lead to disagreement and delay in the event of breaches of the stipulation, particularly in view of the ambiguous reference to "primary picketing" and the respondent's reserving the right to engage in such picketing in paragraph 5.

Objection 5. Paragraph 4 contains an exculpatory clause under which the respondent does not admit it has engaged in unfair practice. It is submitted that this clause has no place in the proposed stipulation, since it is inconsistent with the whole idea of the Petitioner Regional Director's having reasonable cause to believe that the charge was true and that complaint should issue. This was the basis upon which the petitioning Regional Director filed this suit, and he should not now join in a stipulation exculpating the respondent union.

It is respectfully requested that if the Court is disposed to approve this proposed stipulation, it state in its Order of approval that it is doing so over the objections of Sears.

Respectfully submitted,

Lewis, Rice, Tucker, Allen & Chubb,

By D. J. Sullivan,
611 Olive Street—Suite 1555,
St. Louis, Missouri 63101,
231-5833,

Attorneys for Sears, Roebuck & Co.

(Dated: July 7, 1970)

MOTION TO INTERDICT ENTRY OF AND OBJECTIONS TO PROPOSED STIPULATION.

Come now Terminal Freight Handling Company ("Company") and Terminal Freight Cooperative Association ("Association"), charging parties and initiators of all administrative action in the underlying Board proceedings known as Case No. 14-CC-604, and pursuant to its Motion to Appear and Participate as Full Parties Litigant heretofore filed, moves this Court interdict entry of the proposed Stipulation being submitted to the Court for its approval herein.

The basis for the Motion of Company and Association herein, and its objections to the proposed Stipulation, are:

Objection 1. The format of the proposed stipulation is an agreement between counsel for the government and counsel for the respondent union. No provision is made for Company and Association to be parties to the stipulation. The position of Company and Association is they are proper parties to this suit and that therefore, they are necessary and required parties to any proposed stipulation undertaking to dispose of the suit.

Objection 2. In Paragraph 1(a), (b), (c), there is no provision for the respondent union's agreeing to dissolve and cancel the conspiracy it has entered into with Teamsters Locals 600, 618, 688, and others to cause secondary work stoppages among employees of employers utilizing the facilities of Company and Association in furtherance of its dispute with BeRite, a different employer. Nor does the proposed order granting temporary injunction provide for this. The evidence would demonstrate that such a conspiracy does exist and, to remedy the violations that have occurred, this conspiracy should be dissolved and cancelled.

Objection 3. The stipulation does not provide for the entry of a temporary injunction now, but involves the withholding of injunctive relief unless and until a breach

of the stipulation has occurred. We submit that the stipulation should provide for the immediate entry of temporary injunction, in view of the serious violations of the act which have occurred.

Objection 4. Under Paragraph 2 of the proposed stipulation, breaches of the provisions of the stipulation can be brought to the attention of the Court only after investigation by the Regional Director, and only the Regional Director may apply for prompt injunctive relief. Aside from their contention that an injunction should be entered now, by consent, Company and Association maintain that if the stipulation is being violated, they should have prompt access to the Court to secure injunctive relief without delay. The history of this whole matter demonstrates how unsatisfactory the procedure is when the charging party is obliged to await the deliberations of the Regional Office of the Board before access can be had to this Court.

Objection 5. Paragraph 4 contains an exculpatory clause under which the respondent union does not admit it has engaged in unfair practice. This clause has no place in the proposed stipulation, since it is inconsistent with the whole idea of the Petitioner Regional Director's having reasonable cause to believe that the charge was true and that complaint should issue. This was the basis upon which the petitioning Regional Director filed this suit, and he should not now join in a stipulation exculpating the respondent union.

Company and Association further join in and adopt the Statement of Objections to Proposed Stipulation heretofore filed in this Cause by Sears, Roebuck and Co., the charging party in underlying Board proceedings known as Case No. 14-CC-603.

Wherefore, Company and Association move this Court to interdict entry of the aforesaid proposed Stipulation for the objections stated above and further move that if said Stipulation is entered as proposed, this Court note

in its order that said entry is over the express objections of Company and Association.

Respectfully submitted,

Borovsky, Ehrlich &
Kronenberg,
111 West Washington Street,
Chicago, Illinois 60602,
By: Jerry Kronenberg.

McMahon & Berger,
1153 Pierre Laclede Building,
7701 Forsyth Boulevard,
St. Louis, Missouri 63105,
By: Gerald Tockman.

Certification.

This is to certify in accordance with the Rules of this Court, that the above and foregoing Motion and Objections was duly served on all parties by hand-delivering true and correct copies thereof this 7th day of July, 1970, to:

Joseph H. Solien, Esquire,
Regional Director—14th Region,
National Labor Relations Board,
1040 Boatmen's Bank Building,
314 North Broadway
St. Louis, Missouri 63102.

Norman Armbruster, Esquire,
Wiley, Craig, Armbruster & Wilburn,
7 North Seventh Street,
St. Louis, Missouri,

D. J. Sullivan, Esquire,
Lewis, Rice, Rucker, Allen & Chubb,
611 Olive Street,
St. Louis, Missouri 63101,

(Attorneys for Sears, Roebuck & Co.)

TRANSCRIPT OF HEARING ON MOTION TO INTERDICT ENTRY OF AND OBJECTIONS TO PROPOSED STIPULATION

Transcript of proceedings had during the hearing in above-styled cause of motion of Terminal Freight Handling Company and Terminal Freight Cooperative Association to interdict entry of and objection to proposed stipulation and objections of Sears, Roebuck & Company to proposed stipulation before Honorable James H. Meredith, Judge of the District Court of the United States, Eastern District of Missouri, Eastern Division, presiding in Court No. 2 thereof.

[1A] APPEARANCES

Mr. John S. Stevens, attorney for Petitioner.

Mr. Norman Armbruster, attorney for respondent.

Mr. Gerald Tockman, attorney for Terminal Freight Handling
Company and Terminal Freight Cooperative Association.

Mr. Daniel J. Sullivan, attorney for Sears, Roebuck & Company.

[2] The Court: This is a proceeding entitled Joseph H. Solien, Regional Director of the National Labor Relations Board versus Miscellaneous Drivers and Helpers Union Local No. 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, No. 70 C 317.

It appears to the Court that a stipulation for settlement of this cause has been entered into between the petitioner and respondent, and that two parties seek to intervene in this proceeding, Terminal Freight Handling Company, and Sears, Roebuck & Company. They also object to the proposed stipulation, and they desire to be heard on the record as to their position.

Proceed, gentlemen.

Mr. Sullivan: If Your Honor please, we have filed with the Court just now, we have also heretofore served counsel with our written objections to the proposed stipulation, and we have filed last week our motion to be accepted as a party in the proceeding, or, in the alternative, to intervene under Rule 24(a). I would like to just expand very briefly on what we have stated in the objections to the proposed stipulation.

The Court: You represent whom?

Mr. Sullivan: I represent Sears, Roebuck & Company, which was a charging party in one of the two underlying Labor Board proceedings, case No. 14 CC 603. [3] We have stated in the written objections that the charging party in the underlying Labor Board proceeding is not a party to the stipulation; and since that point really goes to the basic point of our motion to be accepted as a party, I wouldn't propose to add anything to what we have heretofore stated to the court in a written memorandum in support of that motion, but to just explain in a little bit more detail our objections to the proposed stipulations, since it doesn't recognize the status of the charging party in the Board case as a party to the proposed stipulation and as a party to the lawsuit. Under the arrangement that is set out in the stipulation, if the respondent union is alleged to violate the stipulation, only the Regional Director can bring that to the attention of the Court. That is a further basis for our objection to the stipulation, in that we feel that if there is an alleged violation of the stipulation, we believe that the charging party, that would be primarily the party who is the victim of that, ought to have the right to come into Court, not through the Regional Director but as a party to the lawsuit to show what is going on and should be permitted to petition and pray for further relief arising out of those circumstances.

We were just served with a revised version of this proposed stipulation a number of hours ago. I would like to just expand briefly on one objection that we make arising out of what we consider to be a defect in the stipulation. The revised version of this stipula- [4] tion added a new feature, that is that the respondent union reserves the right to engage in primary picketing notwithstanding anything that is set out in the stipulation. We would say that that begs the whole question and all these proceedings in which we have been involved for the last three weeks.

Th position of Sears, Roebuck was that the picketing of its installations, stores and warehouse was not primary picketing. It was secondary picketing and therefore illegal. The issue that is taking the Labor Board so long to determine was whether that was primary or secondary picketing, as I understand it. When the Regional director filed the 10(1) proceeding and issued the complaint against the defendant, it, in effect, overruled the contention of the union that it was engaged in primary picketing and in effect settled it was secondary picketing and illegal. We would say, therefore, that the union's reserving the right to engage in primary picketing in the terms of the stipulation, would merely beg the question. If there were the allegation of the violation of this stipulation, we would be back at the Labor Board for hearing all over again on the basic question which has been determined, at least in the initial stages of the Labor Board proceedings, that is, that it is secondary picketing and illegal.

I would say too that the way the stipulation is worded it would effect further delay and add to the controversy. If there is a stipulation, we feel it ought to settle [5] the matter, at least settle it on an interim basis while the matter is being heard by the Labor Board.

The other objectives we have to the proposed stipulation we have stated in writing. Your Honor, we are not here to demand or insist that this case be processed

to a hearing just for the sake of having a hearing. Certainly there is a form of stipulation and a content of stipulation that this company would be willing that they enter into, and I would like to file this as a proposed stipulation which I think would be proper in the circumstances. I have already served on other counsel a copy of this.

Mr. Tockman: Your Honor, I represent Terminal Freight Handling Company and Terminal Freight Cooperative Association. We have, on July 1st, filed a motion to appear as parties and participate as a litigant. Today we filed a motion to interdict the proposed stipulation together with objections to that proposed stipulation. Basically the content of our motions are along the lines of the objections outlined by Mr. Sullivan in behalf of his client.

My clients are charging parties in underlying case No. 14-CC-604. Without unduly lengthening the record, I would join in the position stated by Mr. Sullivan. I would further point out to the Court and it has been determined that facts submitted by our client, Terminal Freight Handling Company, that during the course of the [6] investigation conducted by the Labor Board that there were violations of the law occurring at the time that the respondent union was negotiating and talking about entering into a settlement.

For the reasons stated by Mr. Sullivan and for the further reasoning that it is well established that public good can best be effected ultimately by formal order in event that it is probable there may be a recurrence of the unlawful activities, it is our position that a formal court order should be entered upon the consent of the parties, including Sears and Terminal Freight Handling Company, so that we can be protected against a recurrence of those activities.

We would join in the position stated by Mr. Sullivan in the proposed stipulation which he has previously served upon the parties.

Mr. Sullivan: I might mention, if I may, Judge, that the proposed stipulation which we say would be acceptable to my client provides for the entry of an order now and provides for curing the defects which we have stated in the Government's proposed stipulation.

The Court: What does counsel for the Labor Board have to say?

Mr. Stevens: Your Honor, first, I think we are all aware of the fact that the basic cause which gave rise to the picketing, unlawful picketing, is settled. Second, Mr. Sullivan has correctly pointed out that the pro- [7] posed stipulation does require the Regional Director of the National Labor Relations Board to bring about a hearing upon filing of affidavits. We feel it was clearly Congress's position in the Norris-LaGuardia Act to prevent private parties ever bringing injunction suits to prevent appropriate picketing and to give that power to the Regional Director, not the Regional Director but the National Labor Relations Board and its agents. This is what Mr. Solein is seeking to do. To allow a private party now to reinstigate an inactive case, Judge, here amounts, in my opinion, to ignore Congress's intent to prohibit private parties from bringing injunction actions.

Mr. Sullivan also points to the fact that there is a provision in the stipulation which permits the respondent to engage in primary picketing activities. The Act, Section 8(b) 4(b), the section of the law under which this suit was commenced provides, nothing contained in this clause B shall be construed to make unlawful where not otherwise unlawful any primary strike or primary picketing; so we believe the stipulation truly set forth the law as written. It is true there is always a question of interpretation of whether an act is primary in nature or secondary. The respondent by this stipulation has agreed not to engage in secondary activities. That phrase in the stipulation would permit them to what Congress says they may do, engage in primary activities. There is always a question when an act occurs whether it is primary or secondary.

It seems to me that the Congress has seen fit to put the discretion in the National Labor Relations Board and its agents to determine whether it is primary or secondary. Therefore it is the one to determine whether there should be an action brought. If further picketing should occur, which seems to me highly unlikely, they would be protected, as secondary activities are violative of the stipulation.

The Court: Let me ask you this. What in the context of the dispute, which apparently at the present time still has some ramifications to it, what do you really mean by that paragraph, "nothing contained in the stipulation shall be construed to make unlawful, where not otherwise unlawful, and primary picketing."

Mr. Stevens: All right, a situation might arise—Do you want to respond to that, Norman?

Mr. Armbruster: It depends on what happens. Dependable has a contract with Local 610. They occupy some of the warehouse premises. So far they are not primarily involved in a dispute. But if their contract should end, and a question should arise about whether Dependable would sign a new contract or not and our employees strike, although they are members of 610, they would have the right within the statute to primarily picket against Dependable as far as those premises are concerned. They could picket at the warehouse, picket Dependable, so long as they don't talk to persons [9] or interfere with persons who want to do business with Sears. They could not secondarily picket Sears because they are not involved in a union dispute with Dependable.

The Court: What have you got to say?

Mr. Armbruster: The first thing, Your Honor, is that Mr. Sullivan and Mr. Tockman throughout and in their motions indicate or take the position that the position of the respondent and of the charging parties under 10(1) is exactly the same, but it isn't. 10(1) specifically states that upon filing of a petition for an injunction the Court shall cause notice to be served on any person involved

and which person, including the charging parties, shall be given an opportunity to appear by counsel and present any relevant testimony. I cited several cases where the Courts have said that is all they are entitled to. As far as the union is concerned the same section says that for the purpose of this subsection the District Court shall be given jurisdiction of a labor organization in the district in which it has its principal office or in any district in which the organization has an office or has engaged in promoting its activities, and service of process upon certain officers and agents shall constitute service upon the labor organization and make the organization a party to the suit. So Section 10(1) specifically states that a labor union is a party. The other people have a right to present relevant testimony.

[10] Now, these same two parties, Sears and Terminal, have been all up and down the Federal Court contending for their position here under 10(1)(b) injunctive proceedings. They have been rebuffed at every turn. Recently they were rebuffed by the United States Supreme Court when they took certiorari from a decision of the Tenth Circuit that the charging party has no right to appeal to the Appellate Court from the denial of a 10(1) injunction. The reason for that is that Congress has provided a harsh and drastic remedy in this kind of situation, an injunction without any bond required to be put up by anybody, and the situation arises that if the Court would issue a 10(1) injunction and would be in error, we would have no remedy. In most instances, as in this particular case, where a strike is called to try to improve working conditions and get better wages, after we had in fact engaged in settling the case, Sears evidently wants to control the whole lawsuit. That they have no right to do. Congress has provided this very drastic remedy, and the Court has stated that they have no business in these cases except to present testimony and they can make their argument by Counsel, but they are not a party to the lawsuit.

This is the first case I have ever been in where an injunction suit has been filed after the picketing has ceased. The picketing was actually stopped on the 28th and on the following day this suit was filed. The [11] only reason we are signing this stipulation is not because we think we have violated the law but it is to save the expense of a lawsuit.

Mr. Sullivan: On this question that we are trying to evade the provisions of the Norris-LaGuardia Act, we said in the beginning the Government filed this lawsuit. If we were intending to disregard Norris-LaGuardia, we would have been up here filing our own lawsuit for the kind of relief that the Government is seeking in this case. We realize it is well established that only the Government can file this kind of a lawsuit. All we are asking is that as a party, really as a party who is the victim of an illegal action, is that we be accepted in the status as a party to the lawsuit, so that it can't be settled out from under us on a meaningless basis, which is the way we look at the proposed stipulation.

Your Honor asked, "What do you mean by primary picketing?" Here is what my client feels it means. For three weeks there were pickets at Sears' warehouse. The Government concluded early in the game the picketing was secondary; but the picketing at the warehouse continued. After two weeks the Government decided that it was illegal. The question was whether it was primary picketing. We realize that the statutes provides that there may be primary picketing. But since the whole issue was whether the picketing that was going on at the warehouse was primary, we don't want to be caught in that trap again. What do they mean by the paragraph that says they are reserving the right to primarily [12] picket. Evidently this does not settle a thing as far as the stipulation is concerned, even on an interim basis while the Labor Board adjudicates the thing.

I would just like to say one other thing about Mr. Armbruster's comment about Sears, Roebuck being rebuffed in all the courts on this question. I would answer

only, Your Honor, that in the case that Norman referred to, a recent decision of the Supreme Court, it was a decision of the Court of Appeals of the Tenth Circuit. It was a decision of the Court of Appeals of the Tenth Circuit that Sears, as the charging party in the underlying Board proceeding, did not have standing or status as a party to appeal from denial of the injunction before final proceedings before the Board. Sears sought certiorari on the question of whether it had status or standing as a party to appeal. The Supreme Court granted certiorari on that point, on that question. In the meantime the Labor Board adjudicated the proceeding and ground. out a finding that the Union had violated the Act. When the Board reached a determination of the underlying charge, we felt it would have been of benefit to us to have this question decided, but the Supreme Court remanded the matter to the District Court to make a determination as to any need for other relief—the Court of Appeals, not the District Court. But, conjunctively, the United States Supreme Court vacated the judgment of the Court of Appeals, which had the effect of denying party status to Sears in that situation. We say, after the Supreme Court took certiorari on this very question, it was vacated the Court of Appeals' judgment deny-
[13] ing party standing or status. This is not quite being rebuffed all over the lot. We would say that we believe, based on what happened in that case, we would have party status now in this situation.

Mr. Armbruster: Judge, may I say on that same matter, the same application for injunction against the Carpetlayers, the Court of Appeals, which had the basic dispositive action, returned it to the Labor Board because they said Sears, Roebuck probably or may not have been a neutral employer, and it had been returned to the Labor Board for further findings.

Now we have a situation here in a 10(1) proceeding where the trial court feels that Sears is a neutral in the underlying proceeding before the Labor Board; the Labor Board found it was a neutral in the underlying proceed-

ing; but it appears that the Court of Appeals felt it may not have been a neutral and has reverted back to the Board. There are very good instances of the difficulty of these questions.

We want only what the statute says, that is, it is going to be understood that when we are making this kind of settlement that we are still permitted to engage in primary picketing. It creates a very difficult situation. I don't think the Labor Board ever did decide—I am not questioning, it seems that is what Joe Solein, the general counsel, decided. I don't think that has been decided, I don't think they ever did decide that the picketing at the warehouse was unlawful. The Govern- [14] ment talked about picketing at the stores. It is true we did picket at the stores for one or two days, then they were pulled down. Evidently the question of whether or not it was primary or secondary picketing becomes a question which is very difficult, but, again, I say we do not believe we actually violated the Act.

The Court: Let me ask you this; in the stipulation you have set out in specific language that you will not picket a Sears, Roebuck, and you name some addresses, what is your purpose?

Mr. Armbruster: How would that all tie in to that last clause? You see here is the purpose, in other words, we are not agreeing we won't picket at those places at all. We only agree that we won't picket at those places or addresses—let's say, in the event, for instance, there are some addresses there in East St. Louis. Now Be-Rite operates trucks in East St. Louis that were not affected by the strike. They have a right to operate, but we could have gone over to East St. Louis and picketed while Be-Rite trucks were at those stores. We could have done that. But, again, the reason we want that clause in there is so that there is no misunderstanding by anybody; so that we are not saying we are going to give up our right to primary picketing. All that stipulation does in two

instances is repeat the statute: First it says what we won't do; second, what the stipulation says we can do. [15] The only reason, as I say, we are signing the stipulation is because we see no point in wasting the Court's time or our client's money trying something here where the whole dispute is over with.

Mr. Sullivan: Judge, on the question of the warehouse, whether or not the Government contends there was a violation in the picketing out at the warehouse, the more Mr. Armbruster states the more we feel that this stipulation is likely to build up further controversy. Paragraph C provides they won't picket at or in the vicinity of Sears, Roebuck's property and so on. Then about the fourth line down it covers Sears' warehouses at two different addresses. I would say the Government contends that is illegal picketing and I can't see any reason for entering into the stipulation at all. They say we agree not to picket the warehouse, but then they turn right around and say they won't give up the right to primary picketing.

Mr. Armbruster: Mr. Sullivan, please do read all of the stipulation, will you? We agree we won't picket at the warehouses for the purposes indicated or engage in picketing at Sears or stores doing business with Be-Rite. We don't agree we won't picket those stores for all purposes. For instance, if there was another dispute, if Be-Rite is operating its facilities there and at your stores, we would certanly picket around its trucks while that is going on. That is what we want clearly understood. [16] We want to remove any confusion now. All I am asking for is what the statute states we have a right to do, that is engage in primary picketing.

The stipulation Mr. Sullivan proposes says that we agree that we won't picket any of those, even if we had a dispute with Sears. If we would organize the unorganized employees of Sears, so that he proposes, according to the stipulation which he would want us to sign, we

would agree we would not picket at any of those addresses for any purpose regardless of what it is.

Mr. Sullivan: Your Honor, just in conclusion, it seems to us that if a charged union, the respondent union, continues to offer all these points and make all of these contentions, it shouldn't be entering into a stipulation. As I understand, the purpose of this stipulation is to avoid hearings and time-consuming proceedings before the Court while the matter is prosecuted before the Labor Board. That if the union is going to stay flexible on what primary picketing is, what has been resolved? Your Honor, for the last time, it seems to me we are accomplishing nothing by this stipulation. It will not avoid litigation at the end. Evidently the questions are the same. Nothing has been settled.

Mr. Armbruster: Let me ask a very simple question. The purpose of a 10(1) injunction is to preserve the status quo until the Labor Board decides a situation. They talk about anything happening. What is hap- [17] pening? There is no picketing at the stores of any kind. As I say, we have never heard of a situation where some ten days after a strike is ended, we are not here arguing about an injunction. I have never been in this situation. And I can't for the life of me figure out what the motive of the thing is.

The Court: What do you say?

Mr. Stevens: I think the law does give the union the right to engage in primary picketing. It specifically says so in 8 (b) 4 (b), and to state that in the stipulation is stating the statute itself. Mr. Sullivan objects and seems to think that because of the difficulty in sometimes determining whether it is primary picketing or secondary picketing that all picketing should be prohibited. That, we feel, would be overstepping the bounds of the instructions Congress has given us. Those instructions specifically tell us not to interfere with primary picketing. The duty would fall upon the Labor Board to make a determination whether any new act that might occur was pri-

mary or secondary. They could come in then again. As in this case, once more, after investigation, I would continue having something to say here about making a determination if the picketing had the secondary character.

Incidentally, as a result of a new act—originally the picketing at Sears' warehouse seemed primary in character. But there was new evidence that came in, or additional evidence, in ten days or two weeks which [18] did lead us to the conclusion that at least at that time it was secondary in character. I don't think Mr. Sullivan even would contend we should file the affidavit for injunction of any picketing regardless of whether it is primary or secondary. It should only be after the violation of the law; then we should come in and file the affidavit. That is the meaning of this provision.

Mr. Tockman: If Your Honor please, I don't want unduly to repeat. Now I think we come to the clear proposition, since there is nothing in it which prohibits primary picketing, the stipulation, in a situation Mr. Armbruster was talkng about, would not prohibit such occurrences. On behalf of my client, in the context in which this situation occurred and because of the danger of recurrence of those acts, we should not go through the same delay again. There was been three weeks delay now.

We had clear, cogent evidence that they conspired to prohibit and stop anyone from doing business with Sears. We furnished these affidavits to the Labor Board, and I think it is significant that we are here now before the matter is settled. I think with this paragraph in the stipulation it creates more than a possibility of such recurrence.

The Court: Very well, gentlemen. As I understand it, there is no picketing at this time, is that correct?

Mr. Armbruster: Yes, sir.

Mr. Sullivan: That is a fact.

[19] The Court: Very well. The Court will take all of these matters under advisement, including the right of

the parties to intervene, and whether or not the Court approves the stipulation as presented, and when I reach a decision you will all be notified in writing.

Mr. Sullivan: Thank you, Judge.
Mr. Stevens: Thank you.
Mr. Armbruster: Thank you.
Mr. Tuckman: Thank you, Your Honor.

* * * *

CERTIFICATE

I hereby certify that I was present at the hearing had in the case numbered and entitled and on the day as shown on page 1 of this transcript; that I reported the proceedings in shorthand truly and accurately to the best of my ability; and that pages 1 through 19 hereof contain a true and accurate transcript of my original shorthand notes and the proceedings had at said hearing.

/s/ N. Ruth Wood
Official Court Reporter

EXHIBIT I.

UNITED STATES DISTRICT COURT

* * * (Caption—No. 70 C 317 (2)) * * *

ORDER

This matter is pending on motions of Sears, Roebuck and Company, Terminal Freight Handling Company, and Terminal Freight Cooperative Association to intervene as full parties in this litigation, and upon the proposed intervenors' objections to a proposed stipulation petitioner and respondent presented to the Court. The Court has been duly advised by briefs of all parties and by oral argument.

It Is Hereby Ordered that the motions of Sears, Ro buck and Company, Terminal Freight Handling Compan and Terminal Freight Cooperative Association to inte vene be and the same are denied. However, these parti will be notified of all actions by the petitioner and r spondent in this case, and will be permitted at all tim to introduce evidence, appear at hearings, and file brie and keep the Court advised of any matters that shou be brought to the attention of the Court.

It Is Further Ordered that the proposed stipulation tered into between the petitioner and respondent is d approved.

It Is Further Ordered that the matter be set do for hearing on Wednesday, July 15, 1970, at 10:00 a. at which time the respondent is directed to show ca why a temporary injunction should not be issued.

It Is Further Ordered that the Clerk of the Court sh note the names of the attorneys for the proposed in venors on the docket and they shall be sent copies of pleadings, memoranda, and orders by the Clerk, and petitioner and respondent shall also send copies of pleadings and briefs which they may file to attorneys the proposed intervenors.

Dated this 8th day of July, 1970.

/s/ James H. Meredith,
United States District Ju

UNITED STATES DISTRICT COURT

* * * (Caption—No. 70 C 317 (2)) * * *

STIPULATION.

It Is Hereby Stipulated And Agreed by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that:

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Co-

> ticles, materials or commodities or to perform any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the provisions of paragraph 1 of this Stipulation, the

Court may, forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection, Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317 (2) now pending before this Court.

Dated at St. Louis, Missouri, this 9th day of July 1970.

/s/ John S. Stevens
John S. Stevens
Attorney for Petitioner

/s/ (Illegible)
Attorney for Respondent

Approved and so ordered this 9th day of July, 1970.

/s/ James H. Meredith,
United States District Judge.

UNITED STATES DISTRICT COURT

* * * (Caption—No. 70 C 317 (2)) * * *

MOTION OF CHARGING PARTIES TO ACCEPT AND CONSIDER THEIR OBJECTIONS TO THE STIPULATION PREVIOUSLY APPROVED BY THE COURT HEREIN AND FOR AN ORDER RESCINDING OR AMENDING SUCH STIPULATION

Now come Terminal Freight Handling Company and Terminal Freight Cooperative Association, (collectively referred to herein as "Terminal"), Charging Parties before the National Labor Relations Board,[1] and move this Court to accept for consideration their following Objections to the Stipulation approved by the Court in this matter and for an Order amending that Stipulation, which remains pending in this Court, in accordance therewith:

Objection No. 1:

Neither Terminal nor the Court is now or has ever been armed with sufficient information to judge whether the Stipulation executed herein by counsel for the Regional Director and Respondent Union constitutes a full and adequate remedy for the violations of law which were uncovered by the Regional Director pursuant to the charges which were initially filed by Terminal. Evidence obtained from Respondent-Union's witnesses was not available to or discoverable by the Charging Parties; no hearings were conducted in this case which would have revealed the full scope either of the Respondent-

[1] In the previous proceedings held in this case, Terminal and Sears, Roebuck and Co. functioned as joint Charging Parties as a consequence of the Regional Director's consolidation on their separate charges before the Board and his filing, on their behalf, of a joint injunction petition in this Court under a single case number. However, Sears, Roebuck and Co. has determined not to proceed further in this case. Accordingly, the instant document is filed and will be pursued solely by Terminal.

Union's unlawful activities or those of other unions which may have assisted the Respondent and thereby incurred the duty to remedy their own misconduct; and the Director at no time disclosed to the Charging Parties the nature of the violative conduct which his investigation uncovered and which were purportedly remedied in the Stipulation to which the Charging Parties objected prior to its approval by this Court.

Since the right to make Objections becomes meaningful only to the extent the Charging Parties possess sufficient facts to formulate intelligent and encompassing Objections, and since, in the absence of some disclosure by the Director of the nature and scope of his investigation, such facts were necessarily unknown to the Charging Parties, therefor the failure of such disclosure constitutes an independent ground for Objection to the approval of the Stipulation herein.

Accordingly, the Court should rescind its approval of the Stipulation, and should issue an Order requiring the Director to disclose to the Charging Parties the facts bearing on Respondent's violations of law which its investigation discovered and without which no Charging Party can know whether any given Stipulation in fact remedies fully the violations of law to which it was subjected or can formulate adequate Objection.[2]

Objection No. 2:

Independently of the foregoing Objection, Terminal opposes the approval of the Stipulation herein because it fails expressly to confer upon Terminal the right unilaterally to move this Court, should the Respondent Union

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[2] The information sought by Terminal does not include the names of prospective witnesses or intra-office communications or any other elements whose disclosure would affect the Agency's ability to function effectively or to fulfill the duties delegated to it by Congress.

breach the terms of the Stipulation, to set that document aside and grant injunctive relief pursuant to the Director's previously filed and still pending petition.

Under the terms of the Stipulation, as it is presently constituted, should the Respondent Union breach its commitments therein, Terminal is not permitted to bring this charge directly to the District Court for expeditious hearing and resolution, but is required, instead, to bring the facts to the attention of the Board's Regional staff and thereafter to wait, without relief, (i) while the Region investigates the matter pursuant to a schedule of its own selection, (ii) engages in an administrative decision-making procedure concerning the merits of the charges, (iii) obtains such authorization to proceed to the District Court as it concludes is administratively necessary or advisable, (iv) secures affidavits to its satisfaction, and (v) then proceeds—if in its discretion it elects to do so—to the District Court.

Accordingly, Terminal objects to the subject Stipulation since it imposes on the Charging Parties this wasteful and unnecessary procedure which substantially vitiates whatever protection against a resumption of unlawful picketing which the Stipulation should be designed to afford.

In Support of this Motion to accept and consider the foregoing Objections and to issue an amendatory Order in conformity therewith, the following is shown:

(a) On June 18, 1971, the United States Court of Appeals for the Eighth Circuit issued a decision in Terminal Freight Handling Co., et al. v. Solien, F. 2d , 77 LRRM 2625 (No. 71-1042), which recognized the right of Charging Parties to proceed unilaterally to a District Court for the purpose of objecting to settlements or Stipulations which had been negotiated in lieu of injunctive relief under Section 10(1) of the National Labor Relations Act (29 U.S.C. Section 160(1)). In granting

them the right to seek to overturn or amend such Stipulations, the Court of Appeals conferred upon Charging Parties a status or standing entitling them to be heard and imposed on the District Courts a correlative duty to consider the views they express, neither of which had been judicially recognized at the time this Court originally approved the Stipulation to which Terminal objects in this Motion.

Accordingly, in the instant Motion, Terminal exercises statutory rights which were not judicially articulated until June 18, 1971. To the extent Terminal has previously filed Objections to the subject Stipulation with this Court, it was not done under the umbrella of such statutory right and, similarly, the response of this Court thereto was not governed by the existence of a specific statutory duty. Thus, this Court did not rule upon the merits of any of the Objections previously made, which rulings, prior to the recent Solien case (No. 71-1042), were presumably not considered by the Court to be required. Yet such rulings are essential if, for example, Charging Parties are to be afforded an opportunity for the effective exercise of appellate review which the granting, in Solien, of defined statutory rights in the District Courts presupposes.

Therefore, Terminal seeks, in this Motion, such a judicial response to its exercise of the rights granted in Solien.

(b) With respect to the merits of Objection 1, both the Courts and Congress have been increasingly sympathetic to the proposition that those whose rights and interests are in legal jeopardy are entitled to the fullest disclosure of facts which might aid them in their protection. In both Leeds & Northrup Co. v. N.L.R.B., 357 F. 2d 527 (CA 3, 1966), and Concrete Materials of Georgia, Inc. v. N.L.R.B., F. 2d , 76 LRRM 2832 (CA 5, 1971), the Courts held that Charging Parties before the Board are entitled to an evidentiary hearing on their

objections to the Board's administrative settlement of their meritorious cases. In Leeds & Northrup, the entitlement was unlimited; in Concrete Materials, it was restricted to objections raising "material issues of disputed fact". In either event, the right to such hearings, with the attendant right, through cross-examination, for example, to secure the fullest record to support the Charging Parties' objections, evidences judicial concern for full factual disclosure. Moreover, the Court's qualification, in Concrete Materials, that the objections raise "material issues of disputed fact" carries with it the natural implication that the Charging Parties are entitled to full factual disclosure by the Board in order to determine whether such a dispute exists. Indeed, an awareness both of the beneficial consequences of full disclosure by governmental agencies and the need to assure it has found expression in the Freedom of Information Act, 5 U.S.C. Section 552 (Supp. II, 1965-66); 5 U.S.C. Section 552 (1970). This Congressional enactment, like the judicial decisions cited above, constitutes at the very least persuasive policy support for Objection 1. The recent decision in Julius G. Getman, et al. v. N.L.R.B., F. 2d (No. 71-1097, CA DC, August 31, 1971), constitutes a judicial exclamation point on this statement of policy as the Court there made clear that the specific and limited exceptions to this Act are to be most narrowly construed.

There is now pending in the United States Court of Appeals for the Eighth Circuit another case involving Charging Parties' need for and entitlement to factual disclosure by the Board of the results of its investigation in cases initiated by their charges. Sears, Roebuck and Co., et al. v. Solien, (Nos. 20,462 and 20,472). That case seeks a determination, inter alia, as to whether the Board's agents may settle an unfair labor practice case without making a fact disclosure to the Charging Parties of the product of its investigation, thus limiting those Charging Parties from making a full and informed as-

sessment of the remedial value of the proferred settlement. The principles urged by the Charging Parties in Sears apply equally to the instant case and lend further support to the substantiality of Objection 1.

Finally, no great burden would be imposed on the Board or its processes by a requirement that it make the factual disclosure referred to in Objection 1. Terminal does not seek to discover inter-agency memoranda or other internal deliberations nor to examine the affidavits of any prospective witnesses nor even to be informed as to the identity of any such witnesses. Rather, Terminal seeks only to know (i) the evidentiary facts uncovered by the Director's investigation which support his belief that the law was violated, many of which facts could not otherwise be known by Charging Parties, (ii) those facts which were alleged by them which the Director does not believe to be true or relevant, (iii) the theories upon which the Director proceeds, (iv) the relief which the Director seeks, as well as the reasons for refusing to seek other relief which the Charging Parties may have urged.

At present, Charging Parties are entitled only to that information which is found in the "Complaint" or the injunction petition filed by the Director, which consists of conclusionary facts and mere summary allegations that the law was violated. Terminal believes that informed and intelligent judgments as to the adequacy of proposed settlements cannot be made without the information which they seek and without which they would be unable to propose more appropriate and more reasonable alternatives.

(c) With respect to Objections 2, the merit of that Objection follows necessarily from the Eighth Circuit's Solien decision (No. 71-1042).

Since, as Solien provides, Charging Parties may judicially challenge settlements which they deem to be in-

adequate, it follows that they should be accorded an equivalent right with respect to an adequate settlement which they believe has been breached. In such a situation, Congress' desire to afford protection to neutral employers subjected to unlawful strikes and boycotts requires that they be permitted independent access to the District Court for the purpose of urging the Court to grant or reinstate an injunction as a consequence of the breach of the settlement agreement. Inasmuch as Charging Parties, through Solien, have standing independently to invoke the process of the District Court to urge the granting of the pending injunction petition when the picketing has ceased and the dispute centers only on the adequacy of the remedial provisions of the settlement, then, a fortiori, they should similarly be permitted to invoke those processes where the picketing has resumed in violation of the terms of the Director's attempted settlement.

The question of Charging Parties' right to do so is, moreover, of great practical importance. For when such a breach occurs, the potential for injury is such that time is of the essence. However, to compel the Charging Parties to proceed through the inherently time-consuming offices of the Board assures delay, particularly where, —as often deliberately happens,—the breach occurs during periods when Board personnel, unlike District Court Judges, is unavailable to offer the needed assistance or cannot readily and expeditiously secure the needed administrative authorization to proceed.

The restriction of Terminal's direct access to the District Court in the event of a resumption of picketing in favor of such an unfortunate and unnecessary procedure,—which the subject Stipulation now imposes,—is inconsistent both with the existence of the statutory rights recognized in Solien and with Congress' purpose that proceedings under Section 10(l) should guarantee

the greatest protection from the violative conduct which that Section was designed to remedy.[3]

Wherefore, this Court is urged to grant the instant Motion and to rescind or amend its previous approval of the Stipulation in accordance with the specific requests contained herein.

Respectfully submitted,

/s/ Jerry Kronenberg
Jerry Kronenberg

Borovsky, Ehrlich & Kronenberg
120 South LaSalle Street, Suits 1820
Chicago, Illinois 60603

/s/ Gerald Tockman
Gerald Tockman

McMahon & Berger
7710 Forsyth Boulevard; Suite 1153
St. Louis, Missouri 63105
Attorney for Terminal Freight Handling Company and Terminal Freight Cooperative Association

September 13, 1971

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[3] There is now pending before the Board, for its eventual approval or disapproval, a unilateral settlement of the underlying unfair labor practice case which was approved by the General Counsel over Terminal's objections. However, the Board has agreed to stay its consideration until the Eights Circuit renders its decision in the still-pending Sears case, supra (Nos. 20,462 and 20,472). Since the effect of proceedings under Section 10(1) extends until there is a "final adjudication of the Board" on the underlying proceeding, the Stipulation in this case continues to control the rights and duties of the parties.

State Of Illinois)
) ss.
County Of Cook)

TERRI EVAN KENIS, being duly sworn on oath, deposes and says that she mailed the within "Motion Of Charging Parties To Accept And Consider Their Objections To The Stipulation Previously Approved By The Court Herein And For An Order Rescinding Or Amending Such Stipulation", on the 14th day of September, 1971, at or before the hour of 5:00 p.m., by Certified Mail, to:

Marcel Mallet-Prevost, Esq.
Assistant General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Marvin Roth, Esq.
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Joseph H. Solien, Esq.
Regional Director
National Labor Relations Board
Fourteenth Region
210 North 12th Boulevard
Room 448
St. Louis, Missouri 63101

Norman Armbruster, Esq.
Wiley, Craig, Armbruster & Wilburn
7 North 7th Street
St. Louis, Missouri 63101

/s/ Terri Evan Kenis
Terri Evan Kenis

Subscribed and sworn to before
me this 14th day of September, 1971

/s/ (Illegible)
Notary Public

UNITED STATES DISTRICT COURT

* * * (Caption—No. 70 C 317 (2)) * * *

RESPONDENT'S STATEMENT IN OPPOSITION TO MOTION OF CHARGING PARTIES TO ACCEPT AND CONSIDER THEIR OBJECTIONS TO THE STIPULATION PREVIOUSLY APPROVED BY THE COURT HEREIN AND FOR AN ORDER RESCINDING OR AMENDING SUCH STIPULATION

(Received Oct. 12, 1971)

Comes now Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent herein (hereafter called "Respondent" or "Local 610"), by attorney and file the following Statement in opposition to the Motion of Charging Parties to Accept and Consider Their Objections to the Stipulation Previously Approved by the Court herein and for An Order Rescinding or Amending Such stipulation

1. When this matter was before the Court prior to the approval of the Stipulation entered into by the Regional Director and Respondent, Charging Parties filed separate written objections to the proposed Stipulation and, in addition, were afforded a full opportunity to present their position and objections thereto at a hearing. This Court required certain changes to be made in the original form of Stipulation submitted and, upon making those changes approved the Stipulation. While Charging Parties appealed to the Court of Appeals for the Eighth Circuit[1] from this Court's denial of Charging Parties' motions to intervene or be granted full party status they did not, in such appeal, attack the sufficiency

[1] Solien v. Miscellaneous Drivers and Helpers Union, Local No. 610 (8th Cir., 3/12/71), F., 2d , 76 LRRM 2780, hereafter called "Solien No. I".

merits of the Stipulation as approved by this Court and have, therefore, waived any right to attack that Stipulation now.

2. Under its Objection No. 1, Charging Parties request that this Court require the Regional Director to disclose to the Charging Parties "the facts bearing on Respondent's violations of law which its (sic) investigation discovered and without which no Charging Party can know whether any given Stipulation in fact remedies fully the violations of law to which it was subjected or can formulate adequate Objections." (emphasis supplied). The purpose of 10 (1) of the Act is not to remedy alleged violations, or even to determine if a violation has occurred, but to permit the Regional Director on behalf of the Board to petition "for appropriate relief pending the final adjudication of the Board with respect to such matter." (29 U.S.C. Sec. 160 (1). The matter of "remedying" alleged unfair labor practices is for the Board, and that is not before this Court, See Terminal Freight Cooperative Assn. v. NLRB (CA 3) F. 2d , 66 LC No. 12000, p. 22185.

3. Under its Objection No. 2, Charging Parties seek the right unilaterally to move this Court for injunctive relief should the Respondent Union breach the terms of the Stipulation. If it were permitted to do this, it would indeed be given the right of an intervenor or full party status, rights which it sought before this Court in earlier proceedings, were denied, and such denial affirmed in Solien No. 1. In Solien No. I, the Court of Appeals for the Eighth Circuit in rejecting Charging Party's claim to have the right to intervene stated (76 LRRM at 2786):

> "Intervention as of right presupposes that the applicant has a right to maintain a claim for the relief sought, a right which the charging parties clearly do not have. It is also difficult for us to find that the Board, possessed of expertise developed through years of experience and which has independently de-

termined that there is reasonable cause to believe that the secondary boycott charge will be sustained before the Board, will not adequately represent the interest involved. See Reynolds v. Marlene Industries Corp., 250 F. Supp. 722, 724, 61 LRRM 2342 (S.D. N.Y. 1966)".

Charging parties' suggestion then in its instant Motion that the Regional Director will not take appropriate and immediate action if the Stipulation is violated is without foundation.

4. The strike and picketing which led to this litigation was settled prior to the filing of the 10 (1) injunction. The Stipulation which this Court approved was entered July 9, 1970. Charging parties do not even suggest that that Stipulation has been violated, nor could they because the primary dispute has long since been settled. It is true that the General Counsel has not yet approved the Settlement Agreement in the Board case which Respondent executed on July 24, 1970 (Solien No. I, 76 LRRM at 2782) but that is only because of Charging Party's persistent and multiple litigation which has blocked such approval. Terminal Freight Handling Co. et al v. Solien (8th Cir. 6/18/71) F. 2d , 77 LRRM 2625, hereafter called "Solien No. II", approved the right of the Regional Director to enter into the Stipulation here involved in lieu of injunctive relief. (77 LRRM at 2632). Neither in Solien No. I nor in Solien No. II did Charging Party raise any objection to the form of the Stipulation, nor has it demonstrated or even suggested that the Stipulation has not proven effective in preserving the status quo and protecting the public interest.

For the above and foregoing reasons, Respondent prays that said Motion of Charging Parties be overruled.

Wiley, Craig Armbruster & Wilburn

By: /s/ (Illegible)
Attorneys for Respondent
7 North Seventh Street
St. Louis, Missouri 63101
231-1018

CERTIFICATE OF SERVICE

I certify that I served the within Respondent's Statement in Opposition to Motion of Charging Parties etc., this 20th day of September 1971 by mailing a true copy thereof, by regular U.S. Mail, first-class postage prepaid addressed to: Gerald Tockman, McMahon & Berger, 7710 Forsyth Blvd., Suite 1153, St. Louis, Missouri, 63105, one of the Attorneys of Record for Terminal Freight Handling Company and Terminal Freight Cooperative Association; Joseph H. Solien, Regional Director, 14th Region National Labor Relations Board, 210 North 12th Blvd. (Suite 448) St. Louis, Missouri 63101; Marcel Mallet-Prevost, Esq., Assistant General Counsel, National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C., 20570; and Marvin Roth, Esq., National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

/s/ (Illegible)

UNITED STATES DISTRICT COURT

* * * (Caption—No. 70 C 317 (2)) * * *

PETITIONER'S REPLY BRIEF IN OPPOSITION TO MOTION OF CHARGING PARTIES TO ACCEPT AND CONSIDER THEIR OBJECTIONS TO THE STIPULATION PREVIOUSLY APPROVED BY THE COURT HEREIN AND FOR AN ORDER RESCINDING OR AMENDING SUCH STIPULATION

Comes Now Petitioner Joseph H. Solien, by attorney, and files the following reply brief to the Motion of Charging Parties to Accept and Consider Their Objections to the Stipulation Previously Approved by the Court Herein and for an Order Rescinding or Amending Such Stipulation:

1. Movant's Motion Should Not Be Accepted By the Court

Movant states in support of its Motion to Accept and Consider the Objections that on June 18, 1971, United States Court of Appeals for the Eighth Circuit issued a Decision in Terminal Freight Handling Company, et al., v. Solien, 77 LRRM 2625, which first recognized the right of Charging Parties to be heard on Objections to a Stipulation in an injunction proceeding. Petitioner does not agree that this is an accurate statement of the Court's Decision, however, assuming arguendo that the Court did so hold, Movant did in fact have an opportunity to and did assert Objections to the Stipulation. This Court, in consideration of said Objections and argument thereon, initially disapproved the Stipulation as shown by the Court's Order of June 8, 1970, reported at 75 LRRM 2846. Movant's Objections if they are repetitious of Objections previously asserted have been ruled upon after full presentation and the Court's ruling thereon is res judicata of that issue. If Movant considers its Objections to be new, then Petitioner takes the position that they are untimely filed and should have been filed

at the time the Stipulation was under consideration by the Court in July 1970.

2. Movant's Objection No. 1

In its Objection No. 1 in the current Motion Movant seeks to obtain facts showing the nature of the violative conduct which the investigation of the Petitioner uncovered. Such information is not necessary to a Decision concerning the appropriateness of the Stipulation entered into before the Court and Movant misapprehends the purpose of the Stipulation. Since the Petitioner has the exclusive right to determine what acts give rise to a belief that there is reasonable cause to believe the act has been violated and that a complaint should issue, the facts alleged in his petition limit the issue in an action under Section 10(1). Both the Court and Movant have available the factual conclusions alleged in the Petition for Injunction. From this information alone the Movant and the Court are in a position to determine that the Stipulation heretofore entered into is sufficient to prevent repetition of the acts relied upon by Petitioner and alleged in the Petition for Injunction. Movant in its Objection No. 1 states that it is unable to determine if the Stipulation provides a full and adequate remedy for the violations of law uncovered by the Regional Director. An Injunction proceeding in the District Court is not a proceeding to obtain a remedy for violations but is instead merely intended to reestablish the status quo existing before the alleged violative conduct and to thereby provide an opportunity for the National Labor Relations Board to hear the evidence and determine if a violation occurred and what remedy, if any, would be necessary. The District Court never provides a remedy for violations of law in proceedings under Section 10(1) of the Act. In injunction proceedings the Court's only duty is to determine if the Petitioning Regional Director had reasonable cause to believe that the law had been violated. The Court does not make a finding

that the law has been violated.[1] If there had been a hearing on the petition rather than a Stipulation, the Petitioner would only produce sufficient evidence to carry the burden of proof to show reasonable cause to believe the Act has been violated. It is Petitioner's position with respect to Movant's Objection No. 1 that the Court has already provided Movant an opportunity to be heard on its Objections to the Stipulation even prior to the Court of Appeals Decision referred to by Movant and secondly, the purpose for which Movant states it wishes to present its Objection No. 1, that is, to determine if the Act has been violated and if the Stipulation provides a sufficient remedy for that violation is not a matter within the jurisdiction of this Court.

3. Movant's Objection No. 2

In its Objection No. 2 to the Stipulation Movant takes the position that the Stipulation is improper because it fails to expressly confer upon the Movant the right to unilaterally move the Court to set aside the Stipulation and grant injunctive relief. Movant purports to base its right to file such Objection upon the Decision of the United Circuit Court of Appeals for the Eighth Circuit in Terminal Freight Handling Company v. Solien, supra, however, to do so is to ignore the Decision of that same Court in Solien v. Miscellaneous Drivers Local 610, 76 LRRM 2780, March 12, 1971, in which the Eighth Circuit held that this Movant did not have the right of full party status in this proceeding and did not have a right to intervene. The Eighth Circuit stated that "In-

[1] N.L.R.B., v. Denver Building Construction Trades Council, supra; Madden v. International Organization of Masters, Mates & Pilots, 259 F. 2d 312 (C.A. 7), cert. denied 358 U.S. 909; American Federation of Radio & Television Artists v. Getreu, 258 F. 2d 698 (C.A. 6); Local 450, International Union of Operating Engineers v. Elliott, 256 F. 2d 630 (C.A. 5); Douds v. Milk Drivers & Diary Employees Union, 218 F. 2d 534 (C.A. 2); Douds v. Wood, Wire & Metal Lathers Ass'n., 245 F. 2d 223 (C.A. 3); Printing Specialties & Paper Converters Union v. LeBaron, 171 F. 2d 331, (C.A. 9); United Brotherhood of Carpenters v. Sperry, 170 F. 2d 863 (C.A. 10).

tervention as right presupposes that the applicant has a right to maintain a claim for the relief sought, a right which the charging parties clearly do not have." If this Movant were granted the right to reopen the Stipulation and to have placed therein a provision permitting the Movant to unilaterally cause the Stipulation to be set aside and an Injunction entered by the Court, this would be tantamount to making the Movant herein full party to the proceeding and permitting the Movant to do by indirection that which he could not do by direct action. Movant has no right to obtain an Injunction unilaterally because it does not have the right to maintain an action for the relief sought. Such right belongs to the National Labor Relations Board and as the Court of Appeals stated in the case next above cited, "It is also difficult for us to find that the Board, possessed of expertise developed through years of experience and which has independently determined that there is reasonable cause to believe that the secondary boycott charge will be sustained before the Board, will not adequately represent the interests involved."

In summary Petitioner contends that the Movant herein has wholly failed to show grounds upon which to have his Objections accepted by the Court and that Movant's Motion should be overruled and its Objections not accepted.

Respectfully submitted,

s/ John S. Stevens
John S. Stevens,
Attorney for Petitioner
National Labor Relations Board
Fourteenth Region
Room 448, 210 North 12th Blvd.
St. Louis, Missouri 63101
(Tel.) 314-622-4154

Dated: October 1, 1971.

AFFIDAVIT OF SERVICE

I, John S. Stevens, Counsel for Petitioner herein, hereby certify that I have given notice of the filing of Pettioner's Reply Brief in Opposition to Motion of Charging Parties to Accept and Consider their Objections to the Stipulation Previously Approved by the Court Herein and for an Order Rescinding or Amending such Stipulation by mailing a copy of the same, certified mail, return receipt requested, to the following:

Norman Armbruster, Esquire
Wiley, Craig, Armbruster & Wilburn
7 North Seventh Street
St. Louis, Missouri 63101 (459882)

Jerry Kronenberg, Esquire
Borovsky, Ehrlich & Kronenberg
120 South LaSalle Stret, Suite 1820
Chicago, Illinois 60603 (459883)

Gerald Tockman, Esquire
McMahon & Berger
7701 Forsythe Blvd., Suit 1152
St. Louis, Missouri 63105 (459884)

s/ John S. Stevens
John S. Stevens,
Counsel for Petitioner
National Labor Relations Board
Fourteenth Region
Room 448, 210 North 12th Blvd.
St. Louis, Missouri 63101
(Tel.) 314-622-4154

Dated: October 1, 1971.

UNITED STATES OF AMERICA

Before The National Labor Relations Board
Fourteenth Region

* * (Caption—No. 14-CC-603) * *
* * (Caption—No. 14-CC-604) * *

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 14-CC-603 by Sears, Roebuck and Co., herein sometimes called Sears, that Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein sometimes called Respondent, and in Case No. 14-CC-604 by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., that Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Fourteenth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

Hereby Orders, pursuant to Section 102.33 of the Board's Rules and Regulations—Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this consolidated complaint and notice of hearing and alleges as follows:

1.

The original charge in Case No. 14-CC-603 was filed by Sears on June 10, 1970, and served by registered mail upon Respondent on or about the same date.

The original charge in Case No. 14-CC-604 was filed by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., on June 12, 1970, and served by registered mail upon Respondent on or about the same date.

The first amended charge in Case No. 14-CC-603 was filed by Sears on June 23, 1970, and served by registered mail upon Respondent on or about the same date.

2.

A. Be-Rite Delivery Service, Inc., hereinafter called Be-Rite, is and has been at all times material herein, a corporation duly authorized to do business in the State of Missouri.

B. At all times material herein, Be-Rite has maintained offices and places of business at 8950 Pershall Road, 1911 Locust and 1024 South Vandeventer in the Metropolitan Area of the City of St. Louis and State of Missouri. Be-Rite is, and has been at all times material herein, engaged in the transportation and distribution of goods, wares and merchandise for Sears.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Be-Rite, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

3.

A. Sears is, and has been at all times material herein, a corporation duly authorized to do business in the States of Missouri and Illinois.

B. At all times material herein, Sears has maintained its place of business at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 409 Northwest Plaza, 7412 Manchester, 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and in the State of Missouri. Sears also maintains places of business at 1001 State Street in the City of East St. Louis, Illinois, and 309 Piasa in the City of Alton, Illinois. Sears is, and has been at all times material herein, engaged in the sale and distribution of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Sears, in the Course and conduct of its business, sold and distributed at retail, goods, wares and merchandise valued in excess of $500,000, at each location in paragraph 3B.

D. During the year ending June 1, 1970, which period is representative of its operations during all times material hereto, Sears, in the course and conduct of its business operates, purchased and caused to be transported and delivered at each of its places of business in the States of Missouri and Illinois in paragraph 3B, clothing, furniture, tools, electrical appliances, sporting goods and other merchandise valued in excess of $50,000 of which goods and materials valued in excess of $50,000, were transported and delivered to each of its places of business in the Metropolitan Area of St. Louis, directly from points located outside the States respectively of Missouri and Illinois.

4.

A. Terminal Freight Cooperative Association (hereinafter called Association) is a nonprofit association consisting of 46 companies including inter alia, May Department Stores, Inc., (hereinafter called May) and Sears.

B. Association is engaged in the business of receiving less-than-carload and less-than-truckload shipments, consolidating such shipments into carload lots and reshipping goods to its members' places of business in various locations throughout the United States.

C. Members of the Association individually have annual gross sales in excess of $500,000, and each such member, including May and Sears, annually receives goods, wares and merchandise in Missouri valued in excess of $50,000, directly from points located outside the State of Missouri.

5.

A. Terminal Freight Handling Company, (hereinafter called Handling Company) is a nonprofit Delaware corporation authorized to do business in the State of Missouri.

B. Handling Company is engaged in the handling, consolidation and shipment of freight and acts as the manager of Association. It operates 36 facilities in 24 states and the District of Columbia including a terminal at 924 Cerre Street in St. Louis, Missouri.

C. Handling Company annually receives in access of $1 million from services supplied to members of the Association in connection with the movement of freight in interstate commerce.

6.

A. May is a retail department store enterprise authorized to do business in the State of Missouri.

B. May maintains retail department stores in the Metropolitan Area of the City of St. Louis, each of which stores individually and collective annually sell goods, wares and merchandise valued in excess of $1 million.

C. May annually purchases from suppliers in states other than the State of Missouri, goods, wares and mer-

chandise valued in excess of $50,000, which goods are shipped from said other states directly to May at each of its facilities in the State of Missouri.

7.

A. Dependable Service Company, (hereinafter called Dependable) has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Dependable maintains an office and place of business at 1024 South Vandeventer in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material hereto Dependable, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

8.

A. Action Service Company, (hereinafter called Action) is and has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Action at all times material herein has maintained an offices and place of business at 3528 Wismer Street in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material herein, Action, in the course and conduct of its business operations, purchased and caused to be delivered to its place of business at 3528 Wismer Street electrical and mechanical parts and appliances valued in excess of

$50,000, which parts and appliances were delivered directly to it in the State of Missouri from points located outside the State of Missouri.

9.

Each Be-Rite, Sears, Association, Handling Company, May, Dependable and Action is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a person in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4) of the Act.

10.

Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

11.

At no time material herein has Respondent had any labor dispute with Sears, the Association, Handling Company or May.

12.

At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

13.

A. Commencing on June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in paragraph 12 above has picketed Sears at its stores located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue and at Sears' warehouses at 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 309 Piasa in Alton, Illinois.

B. Commencing on or about June 10, 1970, Respondent in Furtherance of its dispute with Be-Rite referred to in paragraph 12 above picketed Association, Handling Company and May in the vicinity of 924 Ceere Street, St. Louis, Missouri.

14.

14. Commencing on or about June 9, 1970, and continuing to date, Respondent by its officers, agents and representatives, has engaged and is engaging in and by picketing, requests, appeals, orders, instructions and other means has induced and encouraged and is inducing and encouraging individuals employed by Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce to engage in a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their respective employers and has threatened, coerced and restrained Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce.

15.

Objects of the acts and conduct of Respondent set forth in paragraphs 13 and 14 above were and are:

A. To force or require the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in an industry affecting commerce to cease doing business with Sears.

B. To force and require Sears to cease doing business with Be-Rite.

16.

Respondent by the acts and conduct referred to in paragraphs 13, 14 and 15 above, and by each of said

acts, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

17.

The acts of Respondent described in paragraphs 13 14 and 15 above, occurring in connection with operations of Association, Handling Company, May, Sears and Be-Rite, described in paragraphs 2, 3, 4, 5 and 6, above, have a close intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(4)(ii) and (ii)(B) and Section 2(6) and (7) of the Act.

Please Take Notice that on the 27th day of July 1970, at 10 a.m. (CDST), or as soon thereafter as you may be heard, at 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at St. Louis, Missouri, this 2nd day of July 1970.

s/ Joseph H. Solien
Joseph H. Solien
Regional Director
Fourteenth Region
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

UNITED STATES OF AMERICA

Before The National Labor Relations Board
Fourteenth Region

(Caption—No. 14-CC-603)
(Caption—No. 14-CC-604)

SETTLEMENT STIPULATION
(Received Jul 28 1970)

It Is Hereby Stipulated And Agreed by and between Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent), Sears, Roebuck and Co. (herein called Sears), and Terminal Freight Cooperative Association, Terminal Freight Handling Company and May Department Stores, Inc. (herein jointly called Terminal), and the General Counsel of the National Labor Relations Board, that:

1. Upon a charge filed by Sears on June 10, 1970, and served upon Respondent on or about the same date in Case No. 14-CC-603 and a first amended charge filed

by Sears on June 23, 1970, and served upon Respondent on or about the same date in Case No. 14-CC-603 and upon a charge filed by Terminal on June 12, 1970, and served upon Respondent on or about June 15, 1970, in Case No. 14-CC-604, receipt of which charges and amended charge is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board) by the Regional Director for Region 14, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 29 U.S.C., Sec. 151, et seq., (herein called the Act), and Sections 102.15 and 102.33 of the Board's Rules and Regulations, Series 8, as amended, issued an Order Consolidating Cases and Complaint against the Respondent on the 2nd day of July 1970, together with a Notice of Hearing thereon. True copies of the aforesaid Order Consolidating Cases, Complaint and Notice of Hearing were duly served by registered mail on the Respondent, Sears and Terminal, on July 2, 1970, receipt of which is hereby acknowledged by all parties.

2A. Be-Rite Delivery Service, Inc. (hereinafter called Be-Rite) is and has been at all times material herein, a corporation duly authorized to do busjness in the State of Missouri.

B. At all times material herein, Be-Rite has maintained offices and places of business at 8950 Pershall Road, 1914 Locust and 1024 South Vandeventer in the Metropolitan Area of the City of St. Louis and State of Missouri. Be-Rite is, and has been at all times material herein, engaged in the transportation and distribution of goods, wares and merchandise for Sears.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Be-Rite, in the course of conduct of its business operations, furnished services to Sears valued in excess of $50,000.

3A. Sears is, and has been at all times material herein, a corporation duly authorized to do business in the States of Missouri and Illinois.

B. At all times material herein, Sears has maintained its places of business at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester, 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and in the State of Missouri. Sears also maintains places of business at 1001 State Street in the City of East St. Louis, Illinois, and 309 Piasa in the City of Alton, Illinois. Sears is, and has been at all times material herein, engaged in the sale and distribution of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Sears, in the course and conduct of its business, sold and distributed at retail, goods, wares and merchandise valued in excess of $500,000, at each location in paragraph 3B.

D. During the year ending June 1, 1970, which period is representative of its operations during all times material hereto, Sears, in the course and conduct of its business operations, purchased and caused to be transported and delivered at each of its places of business in the States of Missouri and Illinois in paragraph 3B, clothing, furniture, tools, electrical appliances, sporting goods and other merchandise valued in excess of $50,000, of which goods and materials valued in excess of $50,000, were transported and delivered to each of its places of business in the Metropolitan Area of St. Louis, directly from points located outside the States respectively of Missouri and Illinois.

4A. Terminal Freight Cooperative Association (hereinafter called Association) is a nonprofit association con-

sisting of 46 companies including, inter alia, May Department Stores, Inc., (hereinafter called May) and Sears.

B. Association is engaged in the business of receiving less-than-carload and less-than-truckload shipments, consolidating such shipments into carload lots and reshipping goods to its members' place of business in various locations throughout the United States.

C. Members of the Association individually have annual gross sales in excess of $500,000, and each such member, including May and Sears, annually receives goods, wares and merchandise in Missouri valued in excess of $50,000, directly from points located outside the State of Missouri.

5A. Terminal Freight Handling Company, (hereinafter called Handling Company) is a nonprofit Delaware corporation authorized to do business in the State of Missouri.

B. Handling Company is engaged in the handling, consolidation and shipment of freight and acts as the manager of Association. It operated 36 facilities in 24 states and the District of Columbia including a terminal at 924 Cerre Street in St. Louis, Missouri. Handling Company uses employees furnished by Pine Transportation Company to do its stevedoring work.

C. Handling Company annually receives in excess of $1 million from services supplied to members of the Association in connection with the movement of freight in interstate commerce.

6A. May is a retail department store enterprise authorized to do business in the State of Missouri.

B. May maintains retail department stores in the Metropolitan Area of the City of St. Louis, each of which stores individually and collectively annually sells goods, wares and merchandise valued in excess of $1 million.

C. May annually purchases from suppliers in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which goods are shipped from said other states directly to May at each of its facilities in the State of Missouri.

7A. Dependable Service Company, (hereinafter called Dependable) has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Dependable maintains an office and place of business at 1024 South Vandeventer in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material hereto Dependable, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

8A. Action Service Company, (hereinafter called Action) is and has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Action at all times material herein has maintained an office and place of business at 3528 Wismer Street in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material herein, Action, in the course and conduct of its business operations, purchased and caused to be delivered to its place of business at 3528 Wismer Street electrical and mechanical parts and appliances valued in excess of $50,000, which parts and appliances were delivered di-

rectly to it in the State of Missouri from points located outside the State of Missouri.

9. Each Be-Rite, Sears, Association, Handling Company, May, Dependable and Action is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a person in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4) of the Act.

10. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

11. All parties hereto waive the filing of answer, hearing, Trial Examiner's Decision, the filing of exceptions and brief, oral argument before the Board, the making findings of fact or conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

12. This stipulation together with the charges, amended charge, complaint and notice of hearing shall constitute the entire record herein.

13. Upon this stipulation and the record herein as described in paragraph 12 above and without any further notice of proceedings herein, the Board may forthwith enter an order providing as follows:

The Respondent, Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, successors and assigns:

(1) Shall not:

(a) In any manner or by any means including picketing; engage in or induce employees of Sears, Roebuck

and Co., Dependable Service Company and Action Service Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work or threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease doing business with Be-Rite Delivery Service, Inc.

(b) In any manner or by any means including picketing, engage in or induce employees of Terminal Freight Cooperative Association, Terminal Freight Handling Company, Pine Transportation Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work or threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease using, handling, transporting, dealing in the products of or doing business with Sears, Roebuck and Co.

(2) Shall take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Post in conspicuous places at the business offices and meeting halls including all places where notices to members are customarily posted, a copy of the notices attached hereto and marked "Appendix A" and "Appendix B." Copies of the notices to be furnished by the Regional Director for Region 14 after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

(b) Mail to the Regional Director for Region 14 signed copies of the notice marked "Appendix A" for posting, if Sears, Roebuck and Co., Dependable Service Company and Action Service Company are willing, and mail to the Regional Director for Region 14 signed copies of the notice marked "Appendix B" for posting if Terminal Freight Cooperative Association and Terminal Freight Handling Company and Pine Transportation Company are willing, in places where notices to employees are customarily posted. Copies of said notices, to be furnished by the Regional Director for Region 14 shall, after having been signed by the Respondent's representative, be forthwith returned to the Regional Director for such posting by Sears, Roebuck and Co., Dependable Service Company, Action Service Company, Terminal Freight Cooperative Association and Terminal Freight Handling Company and Pine Transportation Company.

(c) Notify the Regional Director for Region 14, in writing, within 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

14. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the order of the Board in the form set forth in paragraph 13 hereof. The Respondent waives all defenses to the entry of the judgment, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words and figures set forth in paragraph 13 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order upon entry of the judgment only to the extent that it has not already done so.

15. This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it, except that it is understood that the failure to file an

answer to the complaint and the signing of this stipulation by the Respondent do not constitute an admission that Respondent has violated the Act.

16. This stipulation, together with other documents constituting the record as described in paragraph 12 hereof, shall be filed with the Board. The stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the stipulation, the Respondent will immediately comply with the provisions of the order as set forth in paragraph 13 hereof.

Signed at St. Louis Missouri
(City) (State)
July 24, 1970
(Date)

Miscellaneous Drivers And Helpers
Union, Local No. 610, affiliated with
International Brotherhood Of Teamsters,
Chauffeurs, Warehousemen And
Helpers Of America

By: /s/ Norman W. Armbruster
Attorney
7 N. 7th Street
(Street)
St. Louis, Missouri
(City) (State)

Signed at _____
(City) (State)

_____
(Date)

Sears, Roebuck And Co.
By _____
Attorney

_____
(Street)

_____
(City) (State)

Signed at _____
(City) (State)

_____
(Date)

Terminal Freight Cooperative Association
And Terminal Freight Handling Company
And May Department Stores, Inc.

By _____
Attorney

_____
(Street)

_____
(City) (State)

Approval by the General Counsel recommended:

/s/ John S. Stevens

John S. Stevens, Attorney
Region 14
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

Date:

Approved:

_____
Office of the General Counsel
National Labor Relations Board
Washington, D. C. 20570

_____
Date

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD an Agency of the United States Government

We Will Not in any manner or by any means including picketing, engage in or induce employees of Sears, Roebuck and Co., Dependable Service Company and Action Service Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work nor will we threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease doing business with Be-Rite Delivery Service, Inc.

Miscellaneous Drivers And Helpers Union, Local No. 610, affiliated with International Brotherhood Of Teamsters Chauffeurs, Warehousemen And Helpers Of America
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri 63102, MAin 2-4149.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD an Agency of the United States Government

We Will Not in any manner or by any means including picketing, engage in or induce employees of Terminal Freight Cooperative Association, Terminal Freight Handling Company, Pine Transportation Company, or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work nor will we threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease using, handling, transporting, dealing in the products of or doing business with Sears, Roebuck and Co.

Miscellaneous Drivers And Helpers Union, Local No. 610, affiliated with International Brotherhood Of Teamsters Chauffeurs, Warehousemen And Helpers Of America
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri 63102, MAin 2-4149.

(Letterhead Of)

LEWIS, RICE, TUCKER, ALLEN AND CHUBB
ATTORNEYS AT LAW

August 12, 1970

Mr. Joseph H. Solien, Regional
Director
National Labor Relations Board
Fourteenth Region
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

Re: Miscellaneous Drivers and Helpers Union,
Teamsters Local 610, etc. (Sears, Roebuck
and Co., etc.)
Case Nos. 14-CC-603, 604

Dear Mr. Solien:

This will acknowledge yours of the 4th, with which you enclosed a proposed Settlement Stipulation, and in which you called upon our client, Sears, Roebuck and Co., charging party in Case No. 14-CC-603, to file any objections it has to the proposed Settlement Stipulation by August 10, 1970. (A later time limit was set in the course of proceedings in the United States Court of Appeals for the Eighth Circuit.)

Our client has strong objections to the proposed Settlement Stipulation and urges you to reject it. It regards the proposed settlement as wholly inadequate and unsatisfactory, and it is unwilling to be a party to it. It believes that you should not recommend its approval. If you submit the matter to the General Counsel with your recommendation for approval, we intend to appeal and protest to the General Counsel and to the Board.

Our objections follow:

First. The proposed settlement would not be valid under the plain terms of the Act. Under Section 10(c), when a Complaint has issued and the Board is of opinion that the respondent has engaged in unfair labor practices, "then the Board shall state its findings of fact," which are supposed to be supported by a preponderance of the evidence, and issue a cease and desist order. A reading of the proposed stipulation reveals no facts whatever relating to the substantive violations of law of which this respondent union is guilty. The respondent union has never filed an Answer, so none of the facts alleged in the Complaint stand admitted. All that appears in the way of stipulated facts, on which the Board could make findings, is a three page recital of jurisdictional commerce facts. It is submitted that a Settlement Stipulation, in order to form a proper basis for Board findings and a Board Order, should provide that the parties agree to facts which add up to substantive violations of the Act, and should further agree that those facts do constitute unfair labor practices and violations of the Act. The proposed stipulation is fundamentally defective in this regard.

In view of the absence of any factual stipulations, and no Answer having ever been filed, the entry of a Board Order and enforcement decree here would be an absurdity. Presumably you regard the resumption of illegal conduct by the respondent Teamster local here as likely, or at least a distinct possibility otherwise you would not have sought a formal settlement. If such a resumption occurred, the order and decree would be worth exactly nothing. They could not be enforced and could not form the basis for a contempt proceeding, because no facts were ever in the record on which the Board based its order, and against which the union's later conduct could be considered.

This defect is contrary to the Board's own instructions to the regional offices, as revealed in the Board's Field Manual. Sections 10166.5 and 10166.6 prescribe the required record basis and factual predicate on which a consent order is to be stipulated. The facts of the unfair labor practice are supposed to be clearly set forth in the Stipulation. At the very least, this settlement should contain admissions or stipulated facts that parallel the allegations of unfair practice in the Complaint. But here there are no facts at all in the stipulation—other than three pages of jurisdictional commerce facts.

Second. Under Section 10164.2 of the Board's Manual, relating to the use of a formal settlement by the Board's staff to remedy unfair practices, it is provided that in no case should there be a sacrifice of remedy in order to procure a formal instead of an informal settlement agreement. This exactly what has happened in this proposed Settlement Stipulation.

You will recall that after your original regional determination that picketing of Sears stores was unlawful, the respondent Teamsters continued to picket our client's warehouses. Even after you had determined to proceed against the picketing of the warehouses, the union attempted, by the insertion of vague and deceptive wording in the 10(1) stipulation, to preserve a right to picket the warehouses on the basis that such picketing would be "primary" picketing. That provision was stricken from the 10(1) stipulation, and it was there provided that the union would not picket at or near nine described locations, including the warehouses. The Warehouse picketing, and whether or not it was "primary" was the whole basis of contention, and the 10(1) stipulation attempted, to some extent at least, to deal with that issue.

Now in this proposed Settlement Stipulation the whole question of picketing at the warehouses is evaded and side stepped. In the consent Board order referred to in paragraph 13, there is no reference to banning picketing

at the warehouses—or at any other named locations, for that matter. The directory portion of the order that is consented to merely paraphrases the statutory wording in 8(b)(4), in the most general terms. We believe if you are going to get a settlement here, the respondent Teamster local should be ordered to cease and desist from the specific acts that constituted the violation, including picketing the warehouses. Having been excluded from settlement discussions, and having been deprived of information relating to the evidence, we are without knowledge of what those specific acts were. But the order should, among other things, direct, without any equivocation, that the union will at least cease and desist from picketing precisely described locations at the warehouses, as well as at the stores.

The terms of the Settlement Stipulation thus would provide significantly less in the way of remedy than was provided, on an interim basis, in the 10(1) stipulation. As the price for entering into a formal settlement, the respondent has indeed driven a shrewd and hard bargain. There has been a sacrifice in the remedy in violation of the Board's own Field Manual instructions, and to the perjudice of the public, and our client's, interest. We urge you not to countenance it.

Third. Under paragraph 12 of the proposed Settlement Stipulation, the record in this case is limited to the charges, the amended charge, the Complaint and the Notice of Hearing, along with the Settlement Stipulation itself. It is submitted that the record should include more than this. It should include also the stipulation which was entered in the 10(1) suit which you brought in the United States District Court. That stipulation includes important judicial admission by the respondent union which would be pertinent and could form some basis for the Board to enter findings of fact concerning the respondent union's violations.

Fourth. Under paragraph 13 of the proposed stipulation, it is agreed that the Board may enter an order against the respondent union; and under paragraph 14 it is provided that a United States Court of Appeals may, on application by the Board, enter a judgment enforcing the order of the Board. If the Board never entered such an order or, if after the Board order was entered, the Board never applied for an enforcement decree, the respondent union would be under no legal compulsion to refrain from further violations. And, in that event, our client, as charging party, could not complain that the Board was violating the stipulation because all the stipulation recites is that the Board may do these things. If it does not, it has not violated the stipulation. This is all the more objectionable, in view of the fact that in the ancillary 10(1) proceeding no injunctive relief was ever obtained.

We would propose that to remedy this defect the Settlement Stipulation should provide that the parties agree that the Board will enter an order, and that the General Counsel, in behalf of the Board will promptly petition the appropriate Court of Appeals for an enforcement decree.

We would propose that to remedy this defect the Settlement Stipulation should provide that the parties agree that the Board will enter an order, and that the General Counsel, in behalf of the Board will promptly petition.

Fifth. The proposed Settlement Stipulation features exculpatory language which is totally at variance with a formal settlement. It would, in paragraph 15, excuse the respondent union from the consequences of never having filed an Answer to the Complaint. It also recites that the stipulation does not constitute an admission that the union has violated the Act.

The fact that the respondent union did not file an Answer, especially in light of its willingness to enter into a formal settlement, ought to be treated as an admission

of all the allegations in the Complaint, in accordance with Section 102.20 of the Rules and Regulations.

Moreover, a recital that signing the stipulation does not constitute an admission that respondent has violated the Act is inconsistent with the issuance of a Complaint before the Board, the filing of a suit for injunctive relief under Section 10(1), or your action in seeking a formal settlement. If you have reasonable cause to believe the statute has been violated, there is no place for an exculpatory clause such as this in the Settlement Stipulation. The presence of such a clause would be an additional obstacle to any meaningful enforcement remedies, by contempt or otherwise, in the event of a resumption of the union's illegal conduct.

Sixth. The proposed Settlement Stipulation would require posting of the notice only in and about the offices of the respondent union. The notice should be mailed to all union members, but in other places where the union committed its violations—in truck terminals, on the trucks of secondary employers, and in other places, so that the real message that a settlement ought to get across to interested persons would be conveyed in a meaningful way.

The respondent has disseminated the erroneous report to the public, and to the labor movement generally, that Sears, Roebuck was on strike. The union should be ordered to take affirmative action to advise all those who were given the erroneous report as to the true state of affairs. It should be ordered, further, to cease and desist from disseminating such false reports about Sears in any future case.

The notice that is provided for in the settlement is written in such vague and unintelligible legalese as to mean nothing whatever to employees and others who might read it. Any notice should be in terms that would have some meaning to truckdrivers and others who would

read it. It should make clear that Sears, Roebuck is not on strike and was not on strike during the period when the union was falsely reporting that it was on strike.

Seventh. A settlement here should require the respondent Teamster local to cancel and revoke any requests or appeals it has made to Teamster Locals 600, 618, 688 and others, to cause their members to refuse to work for Sears, and further require the respondent to dissolve any conspiracy or arrangement it has with these locals calculated to produce that effect, directly or indirectly. The order and decree that is consented to should run to these other locals, as agents of the respondent.

* * * *

The most pervasive objection that we would make to this proposed Settlement Stipulation is that it was discussed, deliberated on, negotiated and worked out without the charging parties having had any voice in the proceedings or opportunity to participate. Further, the charging parties were deprived of the evidence bearing on the respondent union's violations of law. We confidently believe that if the charging parties had been accorded their proper rights under the Act and under the Board's rules to participate in settlement discussions and be provided with essential information on the violations you found, we would have other points to raise with you on the form and content of a Settlement Stipulation. We are filing these objections based on incomplete disclosure of the facts, and without prejudice to our position that the charging parties have been irreparably injured by not having been accorded their rights in the course of settlement proceedings.

Therefore, the proposed Settlement Stipulation, even if it did not contain the fatal defects already enumerated, would be objectionable to our client because it is in the dark as to the precise facts relating to the respondent's conduct which you are undertaking to remedy by this settlement.

We request that we be given the opportunity to discuss these objections personally with you, and to argue the merits orally, before you make a determination concerning the proposed Settlement Stipulation.

Sincerely yours,

D. J. Sullivan

DJS:gsf

NATIONAL LABOR RELATIONS BOARD
REGION 14

Room 448, 210 North 12th Boulevard
St. Louis, Missouri 63101

September 29, 1970

Re: Teamsters Local 610
(Terminal Freight Cooperative
Association and Terminal Freight
Handling Company

Case No. 14-CC-604

(Received Oct-2 1970)

Mr. Gerald Tockman
Attorney at Law
1153 Pierre Laclede Building
7701 Forsyth Boulevard
Clayton, Missouri 63105

Dear Mr. Tockman:

Your letter of August 12, 1970, stating your objections to the proposed settlement stipulation in the above-referred to case has been received and carefully considered in the light of your oral presentation of September 9, 1970. My position as to each of your objections is set forth herein using paragraph numbers corresponding to those assigned in your objections.

1. By statutory scheme the Charging Party does not have a right to National Labor Relations Board file material. The confidential treatment accorded the file herein is consistent with the Rules and Regulations of the Board.
2. There is no statutory right for a Charging Party to be present during settlement negotiations. Because responsibilty for enforcement of the National Labor Relations Act is reposed by statute in the General Counsel, it is imperative that he rather than the private parties conduct and control settlement discussions to assure results consistent with the public interest. The presence of the Charging Party at settlement discussions does not affect the sufficiency of the proposed settlement in the public interest.
3. The proposed settlement follows the format which has frequently been presented to the Board and upon which the Board has consistently entered orders that have been enforced by the various U.S. Court of Appeals.
4. The proposed settlement requires that Respondent not induce employees of Terminal Freight Cooperative Association and Terminal Freight Handling Co. to refuse to work "in any manner or by any means." If any conspiracy should be shown to exist, this language would encompass inducement by means of conspiracy.
5. The permissive tenor of the language in the proposed settlement agreement with respect to the entry of a court decree is the language normally employed in such documents. Regional Office professionals are specifically instructed that they have an affirmative duty to advise the parties that a court order will be obtained even under circumstances where the Board Order has been complied with in the interim.

6. The Charging Party does not have an absolute right to the entry of a court decree. Nevertheless, as has been indicated above, the scheme of the formal settlement stipulation contemplates the request for such inforcement by the Board.

7. The nonadmission clause contained in the proposed settlement has no affect upon the efficacy of the remedy nor of the protection afforded the Charging Party. Similar language has frequently been contained in settlement stipulations upon which both Board and court orders have been predicated.

8. The remedy provided for in the proposed settlement is in conformity with the remedy usually given by the Board and courts in similar cases. N.L.R.B. v. International Union of Operating Engineers Local 571, 317 F. 2d 638 (C.A. 8); International Brotherhood of Electrical Workers Local 1, et al., 164 NLRB 313; Twin City Carpenters District Council, et al., 167 NLRB 1017. Experience with a remedy in this form has demonstrated it to be effective in preventing repeated violations of Section 8(b)(4)(b) of the Act involving the same object. The conduct prohibited by the proposed settlement is not limited to specific places or specific acts but its terms are broad and it in no sense sacrifices any remedy which would be ordinarily provided if the allegations contained in the complaint were to be proven at a hearing.

9. The proposed settlement stipulation provides that the United States Court of Appeals for any appropriate circuit may upon application of the Board enter a judgment enforcing the Board's Order. Courts have frequently enforced Board Orders based upon this language.

10. The provision of the proposed settlement regarding notice posting is in keeping with the usual practice of the National Labor Relations Board.

There is no basis upon which to conclude that the usual posting requirement would not be sufficient. To the contrary, since the Respondent entered into a stipulation in the United States District Court for the Eastern District of Missouri on July 9, 1970, in Case No. 70C 317(2) no violations of Section 8(b)(4)(B) of the Act with respect to the charge in this case has been brought to my attention.

Lastly, the confidential treatment accorded the file material is consistent with the Rules and Regulations of the National Labor Relations Board. As stated above, the responsibility for enforcement of the Labor Management Relations Act is reposed by statute in the General Counsel. It is imperative that he, rather than the private parties, conduct and control settlement discussions to assure results consistent with the public interest.

As the objections presented by you to the proposed settlement stipulation do not in my opinion constitute substantial reasons for not accepting such proposed settlement, I will recommend its approval by the General Counsel for submission to the National Labor Relations Board for its action.

Very truly yours,

/s/ Joseph H. Solien
Joseph H. Solien
Regional Director

Joseph H. Solien, Edquire
Regional Director.
National Labor Relations Board
210 North 12th Street—Room 448
St. Louis, Missouri 63101

RE: Teamsters Local 610 (Terminal Freight Cooperative Association And Terminal Freight Handling Company)
Case No. 14-CC-604
Our File: 2111-3

Dear Mr. Solien:

This letter will constitute the Motion for Reconsideration of Terminal Freight Cooperative Association and Terminal Freight Handling Company (herein called Terminal Freight) with respect to your September 29, 1970 statement of intent to approve the proposed settlement stipulation in the above captioned matter.

We have heretofore, on August 12, 1970, by written statement and on September 9, 1970, by oral presentation, emphasized to you the objections of Terminal Freight to the proposed settlement stipulation. In addition, we have joined in and supported the parallel written objections filed by Sears, Roebuck & Co. (the charging party in Case No. 14-CC-603), which objections were orally presented on September 9th and stated in writing on August 12 and September 14, 1970. We once again stress to you and urge all of these substantive objections.

The bases for the instant Motion For Reconsideration, over and beyond those objections heretofore stated to you by Terminal Freight and Sears, Roebuck & Co., are as follows:

1. A part of the basis for the settlement stipulation proposed by you, and an apparent reason for your willingness to recommend approval of the stipulation, is a stated conclusion that since execution of the settlement

by the charged union, there has been no breach of the settlement agreement or recurrence of the conduct encompassed by it. These recitations, clearly, are not correct since violative picketing of a reserved gate maintained at the premises of Terminal Freight occurred and continued well after execution of one of the first settlement agreements proposed by you. Such recurrence of violative conduct, as yet, has not been encompassed by any settlement stipulation proposed by you or recommended by you for approval. Over and beyond this, the charged union's readiness to violate the terms of a settlement agreement executed by it and its proclivity toward such conduct clearly demonstrates the settlement stipulation proposed by you for approval is inadequate.

2. Insofar as your conclusions to recommend approval of the settlement stipulation rest upon a determination the underlying dispute between Be-Rite and the charged union has been resolved, you have been informed by Sears, Roebuck & Co. (covering both case No. 14-CC-603 and case No. 14-CC-604) that the dispute between Be-Rite and Teamsters Local 610 has not been resolved at all. In fact, the failure of Be-Rite and Teamsters Local 610 to terminate their dispute makes evident, as we have pointed out before, the need for protection against the probability of recurrence of the violative conduct. Unquestionably the dispute between Be-Rite and Teamsters Local 610 is as viable now as it was when you concluded violation of Section 8(b)(4)(B) first occurred at the facilities of Terminal Freight. The failure of the settlement stipulation proposed by you to encompass any facts at all, together with the emptiness of the remedy you propose, make it clear your intended acting will afford no protection whatever against the substantial probability of recurrence of violative activity.

3. In your statement of September 29, 1970, you emphasize that the settlement you propose to recommend for approval is one "frequently presented" and one "in con-

formity" with the remedy "usually given" in similar cases. The settlement stipulation, however, despite the fact courts have on occasion enforced such orders, is totally meaningless. Absence of any fact recitals in the stipulation together with the non-admission clause contained in the stipulation, make it clear the proposed settlement is useless as a protection against repetition of violative secondary conduct. In particular, the Board itself has consistently held that consent decrees containing non-admission clauses with no fact basis for them cannot even properly be taken into account to establish proclivity on the part of a respondent to engage in violative conduct for purposes of framing a remedy in a subsequent case (e.g., Raymond Buick, Inc., 173 NLRB No. 199; Teamsters Local 327, 160 NLRB 1919; Local No. 92, International Association, etc., 138 NLRB 428). It is axiomatic that if such a settlement stipulation cannot even be considered in framing a remedy for violation of the act, it is totally meaningless and affords no protection (by way of contempt citation) against a repetition of the identical violative conduct.

For the above reasons, as well as those previously presented by Terminal Freight and Sears, Roebuck & Co., we strenously urge you reconsider your statements of September 29th and not recommend approval of the settlement stipulation.

Sincerely,

McMahon & Berger
Gerald Tockman
Jerry Kronenberg
Attorneys for Terminal Freight
Cooperative Association and
Terminal Freight Handling Company

GT:mrg

cc: Jerry Kronenberg, Esquire

(Letterhead Of)

NATIONAL LABOR RELATIONS BOARD
REGION 14

Room 448, 210 North 12th Boulevard
St. Louis, Missouri 63101

October 14, 1970

Re: Teamsters Local 610
(Terminal Freight Cooperative
Association and Terminal Freight
Handling Company)

Case No. 14-CC-604

(Received Oct 16 1970)

Mr. Gerald Tockman
Mr. Jerry Kronenberg
Attorneys at Law
Pierre Laclede Building
Forsyth at Hanley
St. Louis, Missouri 63105

Gentlemen:

Your letter of October 6, 1970, has been received and carefully considered. The formal settlement which is the subject of your letter has been forwarded to the General Counsel in Washington for his approval and transmittal to the NLRB for its action. I do not find any matters presented in your letter which lead me to the conclusion that I should request that Washington return the proposed settlement to me for reconsideration.

In the first and second numbered paragraphs of your letter, you speak of the possible violations of a settlement agreement by the Respondent. If such possibility does exist, the way the Board has met such possibility in the past is by requiring a respondent to enter into a formal settlement agreement such as that which I

have recommended be approved in this case. The application of this procedure is unaltered, even assuming a continuation of the underlying dispute. But moreover, here there is but one settlement agreement, that submitted to Washington for approval. No prior proposed agreement was ever approved. I therefore believe that the action I have taken meets your objection.

In the third numbered paragraph of your letter, you refer to the scope of the settlement agreement. This is a matter which we have previously discussed orally and which was the subject of an exchange of letters before us earlier, and my position remains as I have previously stated it. Most important is the fact you deny, that such proposed order may serve as basis for a contempt citation.

As future handling of this settlement proposal now reposes with the General Counsel in Washington, I will forward a copy of your letter to the General Counsel so that he may have your position before him.

Very truly yours,

/s/ Joseph H. Solien
Joseph H. Solien
Regional Director

UNITED STATES OF AMERICA

Before The National Labor Relations Board
Fourteenth Region

* * (Caption No. 14-CC-603) * *
* * (Caption No. 14-CC-604) * *

SUPPLEMENTAL OBJECTIONS

I. Preliminary Statement

The supplemental objections set forth herein to the proposed unilateral settlement now pending before the General Counsel are predicated primarily on the results of a study of all formal and informal unilateral settlements submitted to the Board and the General Counsel over the last three fiscal years.[1] The analysis of these cases reveals, inter alia, four areas of major concern regarding the Board's settlement procedures:

1. The remedies provided, the language of the notice and the manner of publication, the type of settlement, and the inclusion of non-admission clauses differ from case to case with no apparent relation whatsoever to the facts and circumstances of those cases;

2. In no case has the Board or the General Counsel granted an evidentiary type hearing regarding objections;

3. In no case has the fundamental question herein presented been raised, namely, whether Section 10(c) of the Act which requires the Board to make findings of fact applies to Board orders based on settlement agreements;

4. And in no case has the Board or the General Counsel altered the terms of the proposed settlement, thereby establishing the overriding importance of the initial negotiations leading to the formulation of those terms, and the corresponding necessity of the charging party's participation in those negotiations.

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[1] Exhibits A and B.

Given the paramount importance which settlement agreements play in the administrative process,[2] a realistic appraisal of the entire area of settlements is patently long overdue. We submit that the resulting inequities of these procedures are peculiarly highlighted in the present case. Accordingly, the General Counsel should utilize the agreement herein pending as a means of reevaluating all facets of the Agency's settlement procedures.

II. An Overview of the Board's Settlement Procedures.

A. The Wrongful Exclusion of the Charging Party From Negotiation of the Settlement Agreement.

Subsequent to the issuance of a complaint, the charging party is universally recognized as having some right to participate intelligently in the disposition of his charge.[3]

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[2] In a recent brief filed with the Fifth Circuit, the General Counsel stated at page 5:

> "At the outset, it is well recognized that the satisfactory disposition of cases without the necessity of formal proceedings is a most desirable objective in the administration of the National Labor Relations Act. Settlement has been termed the 'lifeblood of the administrative process' (Final Report, Att'y Gen. Comm. Admin. Procedure, Sen. Doc. No. 8, 77th Cong., 1st Sess., p. 35), and its effectuation is of 'manifest importance' in the administration of the Act." (Footnote omitted.)

Concrete Materials of Georgia, Inc. v. N.L.R.B., Nos. 29559, 29606 (5th Cir., September, 1970).

[3] In Marine Engineers' Beneficial Ass'n. v. N.L.R.B., 202 F. 2d (3rd Cir.), cert. denied, 346 U.S. 819 (1953), the court stated:

> "[T]he charging party, after complaint is issued, does have some standing. The Board may refuse to do anything about his complaint . . . But once it does, and once it goes to the extent of filing a complaint . . . he is entitled to have a chance to be heard as the Administrative Procedure Act requires."

See also, United Automobile Workers v. Scofield, 382 U.S. 205 (1965) and Section 101.9 of the Board's Statements of Procedures, effective July 1, 1967 (32 Fed. Reg. 9547). It is submitted that the investigatory phase of the Board's unfair labor practice proceeding terminates and the adjudicatory phase commences upon

While the scope of these rights has not been clearly defined by either the courts or the Board, we submit that participation in settlement negotiations falls within these defined rights. This contention is underscored by an examination of the cases set forth in Exhibits A and B which clearly indicate the prejudice arising from the Board's refusal to allow the charging party's participation in the negotiation of the agreement.

Out of the 32 proposed agreements, 20 charging parties raised objections relating to the language or terms of the agreement. *However, in no case did either the Board or the General Counsel alter the terms of the agreement or the notice on appeal.* In addition, by the time the settlement agreement reaches the Board, the chances of successfully renegotiating its terms thereafter are virtually nonexistent. The passage of time renders the evidence stale, and the charged party has little, if any, incentive to engage in serious renegotiations. Thus, allowing the charging party to suggest the terms of the notice and agreement, after the fact, on appeal, is at best, merely a token right.[4]

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the decision to issue a complaint as would be demonstrated, for example, by the General Counsel engaging in pre-complaint settlement negotiations—the actual issuance of the complaint being merely a ministerial act. Cf. e.g., Terminal Freight Cooperative Ass. et al v. NLRB, No. 18948 (3rd Cir.), where this issue is now before the Third Circuit. However, in this case complaint has already issued and the courts are unanimous in holding that at such juncture the proceedings are thereafter adjudicatory in nature rather than investigatory.

[4] The Regional Director interpreted Sears' request to participate in the settlement negotiations as an effort to wrest control of the discussions from the Agency. The Regional Director's letter dated September 29, 1970, page 2, stated:

> "As responsibility for enforcement of the Labor Management Relations Act is reposed by statute in the General Counsel, it is imperative that he, rather than the private parties, control settlement discussions to assure results consistent with the public interest."

However, the participation of the charging party in the negotiations could not preclude the Regional Director from conducting those discussions or wrest the control of the negotiations from him.

B. The Refusal to Afford a Hearing Regarding The Settlement.

In addition, an examination of the cases reflects another serious handicap for the charging party in the context of a settlement proceedings. Although in four cases, the charging party requested an evidentiary hearing, in no cases did the Board grant the request. In two cases involving informal settlements, evidentiary hearings were denied because no complaint had issued.[5] In two cases involving formal agreements, requests for Leeds & Northrup[6] hearings were made by charging parties. Those requests were also denied on the basis that allowing the charging party the opportunity to submit objections fully satisfies the requirements of due process.[7]

This overly restricted approach to the Board's processes has been criticized by informed legal scholars. For example, one commentator has observed:

> "The fact that victims of unfair labor practices are completely dependent upon the adequacy of Board proceedings for relief argues strongly in favor of affording full procedural protections whenever possible." (footnote omitted)[8]

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[5] Ironworkers, Local No. 10 (Penny Construction Co.) 17-CC-315; IAM, District Lodge No. 1 (Terminal Freight) 4-CC-517.

[6] 357 F. 2d 527 (3rd Cir. 1966).

[7] For example, in Concrete Materials of Georgia, Inc., 10-cc-782, the Board stated:

> "We have considered each of the Charging Party's objections enumerated above and have decided that an evidentiary hearing is not required simply because objections to the settlement agreement were made after issuance of the complaint. The Board has consistently followed the practice of affording an objecting party an opportunity to be heard without an evidentiary hearing as set forth in Roselle Shoe Corporation, 135 NLRB 472, enforced 315 F. 2d 41 (C.A.D.C.), and is satisfied that this practice meets all of the requirements of due process."

[8] Comment, "The Charging Party Before the NLRB: A Private Right in the Public Interest," 32 U. Chi. L. Rev. 786 (1965).

An examination of the cases set forth in Exhibits "A" and "B" indicates that the rights of charging parties are significantly prejudiced by the Agency's doctrine of precluding hearings in settlement proceedings. In numerous cases, the objections did not relate to the significant facts and theories upon which the Board or the General Counsel ultimately predicated approval of the agreement. Moreover, in other cases, the agreements were approved on the basis of facts or negative inferences which the charging party could not have known about. For example, in American Federation of Musicians, Local 153 (Stickney's, Inc.), 20-CC-866, the General Counsel approved a settlement because there was no evidence of the international's involvement in the illegal picketing. A review of the objections indicates that the charging party was never advised of this lack of evidence and, thus, had no real opportunity to fill this void in the proof.

Nor is this an isolated case. In Textile Workers v. N.L.R.B.,[9] the Board stated in a supplemental opinion,[10] that the approval of the agreement was based on ". . . all the factors, legal and factual, elicited by the administrative investigation". However, the charging party had no opportunity to know the basic facts revealed by the investigation and, thus, no opportunity to rebut the same. And, in Local 282, Teamsters Union v. N.L.R.B.,[11] The Board based its approval of the agreement, in part, on information gained through a telephone call necessitated by virtue of the incomplete investigation.[12]

Perhaps the most candid decision of the Board with regard to its policy of approving settlement agreements based on facts which the charging party has not had the opportunity to rebut is, Farmers Co-operative Gin As-

[9] 294 F. 2d 738 (D.C. Cir. 1961).

[10] 135 NLRB 472 (1962).

[11] 339 F. 2d 795 (2nd Cir. 1964).

[12] Brief for Appellant, p. 9.

sociation, 168 NLRB No. 64 (1967). There the Board stated:

> "For the foregoing reasons and in light of the principles stated above, the investigative reports and the recommendations of the General Counsel and the Regional Director, we conclude that the charging parties' objections are lacking in merit and constitute no basis for rejecting the settlement agreement."

We submit there is an inherent unfairness in the Board's policy of rejecting objections of charging parties on the basis of secret investigative reports and recommendations which the charging party has not had the opportunity to rebut.

In all of these cases, had there been a Leeds & Northrup hearing, these factors would have been brought to the charging party's attention. Counterarguments, theories and rebuttal evidence could then have been presented.

We are not saying that the General Counsel should open his files to the charging party in the course of such a hearing. Rather, minimal fairness would require that the charging party have the same rights to informed participation in a settlement proceeding that he would have if his charges had proceeded to hearing.[13]

C. The Right To a Meaningfully Effective Remedy Regardless of Whether the Charges Are Litigated Or Settled.

(a) The Type of Settlement.

Supposedly, two factors are determinative of the appropriateness of a formal settlement agreement as opposed to an informal agreement:

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[13] We emphasize that we are not seeking to discover the General Counsel's files. Rather, we seek only to be informed of the nature and strengths of the evidence upon which the General Counsel relies, his theory, and the reasons for seeking certain remedies and not others.

1. The prior issuance of a complaint,[14]

2. Past violations by the same charged party.[15]

An examination of the cases set forth in the exhibits indicates that prior issuance of a complaint, informal agreements were approved over objections in four cases subsequent to the issuance of the complaint. In none of the cases does the General Counsel's Agenda Minute mention the fact that a complaint had already issued; and the case records reveal no facts or circumstances distinguishing them from post-complaint cases where formal agreements were approved.

With respect to the second criteria set forth above, i.e. past violations, it is virtually impossible to apply.[16] Prior settlements recite no facts upon which a judgment as to a subsequent violation can be based. The union simply claims that the circumstances of the instant case are different. The prior agreement is, unfortunately, silent and, therefore, the Union is able to escape responsibility by signing another factually silent agreement. Of course, if the agreement set out the operative facts establishing the violation, unions as well as employers would be hard pressed to escape the full consequences of repeated violations. Given such a rule, the criteria of past violations with respect to formal or informal agreements

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[14] Section 101.9 of the Board's Statements of Procedure.

[15] See, for example, Local 553, Ass'n of Journeymen and Apprentices of Plumbing and Pipe Fitting, AFL-CIO Summerville-Illinois Co., 14-CC-564.

[16] For example, in Ironworkers Local No. 10, (Penny Construction Co.), 17-CC-315 and Southwestern Oklahoma Building and Construction Trades Council, Local 1141, IBEW (Cobb Electrical Contractors, Inc.), 17-CC-315, past violations were ignored and deemed "remote" (2½ years earlier). In Teamsters, Local 495 (Western Automotive), 21-CB-3345, the union violated an informal settlement which it had executed immediately prior thereto. The informal agreement was approved over objections because the prior informal agreement had not been signed by the regional director when it was subsequently violated.

would have meaning and serve to reduce the number of repeated violations.

(b) The Notice Language.

An examination of the notices in both formal and informal agreement indicates that regardless of the type of settlement, the circumstances of the violation, or the fact that a complaint may have issued, the notice language remains the same. In addition; because of the absence of any facts in the proposed agreement and because the charging party is denied the right to informed participation in the settlement negotiations, he is not in a position to press for a broader publication of a meaningful notice.

Moreover, in cases involving Section 8(b)(4) violations, it is especially imperative that the notice language be simplified. Union members are entitled to know in simple every-day English, exactly the nature of the secondary conduct and the precise activity to be avoided. It is not difficult for the employee to understand a notice involving Section 8(a)(1) and (3) violations or 8(b)(1)(A) conduct; it is the complex nature of the 8(b)(4) violation which compels the simplification of the notice. Although this point was raised in one case involving an informal settlement, the General Counsel rejected the notion without comment.[17] We suggest, in line with informed commentators, simplification of notice language is long overdue.[18]

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[17] IAM, District Lodge No. 1 (Terminal Freight Cooperative Association and Terminal Freight Handling Co.), 4-CC-517.

[18] In Hoffman, "Notice Posting: A Pilot Study," 18 Labor L. J. 556, 557 (1967), it is said:

> "The informative, as well as the remedial aspects of notice posting, have met with a considerable amount of criticism recently, There is more than a modicum of doubt as to whether notices are read, understood, or sufficient to allay the apprehensions and misgivings caused by . . . unfair labor practices."

(c) Settlement Agreements Can Never Constitute Effective Remedies Absent a Recitation of the Facts Constituting the Violation as Required by Section 10(c) of the Act.

The present case presents what appears to be a novel issue of far-reaching significance, namely, whether Section 10(c) requires factual stipulations in settlement agreements. None of the cases set forth in Exhibits A and B raise the issue, and counsel has been unable to locate any other Board or court decision in point.[19]

In rejecting the Charging Parties' 10(c) argument, the Regional Director stated that the language of the agreement was in conformity with the Board's practice regarding such documents. However, an examination of the cases involving settlement agreements reveals that this practice has not heretofore been challenged as violative of Section 10(c). Absent such a prior challenge, the existence of a prevailing practice is immaterial.

The General Counsel is also inclined to point to the enforcement provisions of formal agreements as providing an effective remedy regardless of the absence of facts.[20]

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[19] Accordingly, it is appropriate to set forth some policy considerations bearing on the question. In a related Eighth Circuit case, Sears, Roebuck and Co. v. Solien, Nos. 20,462, 20,472, the General Counsel characterized as "frivolous" the proposition that Section 10(c) requires a factual recitation in settlement agreements and requested that the court summarily dismiss the action. However, the court denied the motion for summary affirmance, thereby indicating its abiding interest not only in the charging party's 10(c) argument, but also in the other issues raised relating to the Agency's settlement procedures. We submit that the General Counsel should likewise give these questions thorough analysis and consideration.

[20] The General Counsel asserts in its brief in Concrete Materials of Georgia, Inc., supra:

> "The Company characterizes the Board's order as a 'slap on the wrist', a posted notice . . ." (Br. 12). What the Company conveniently overlooks, however, is that the Board's order, as enforced by the Court, constitutes an injunction against further such violations, a remedy that can scarcely be disposed of by calling it a 'slap on the wrist'."

However, it is axiomatic that before anyone can be legally restrained from future conduct, the precise actions must be spelled out factually. Absent the specification of such facts, the charged party is free to repeat the unlawful conduct in a slightly different factual context without jeopardy. The General Counsel's attention is directed to the case of Fond du Lac Building and Construction Trades Council, (Ready Mix Concrete, Inc.), 30-CC-115. In 1967, the charged party had been found by the Board to have violated Section 8(b)(4) of the Act.[21] In 1969, the same union engaged in "similar" secondary activity. The regional director issued a complaint which was subsequently withdrawn upon his approval of an informal unilateral settlement. Objections were filed alleging that an informal settlement would not stop additional violations. In approving the informed agreement, the General Counsel stated:[22]

> "It was concluded that, under all the circumstances, the Council's undertakings in the informal settlement agreement provided an adequate remedy for the violation disclosed by the investigation . . . Accordingly, and since further 8(b)(4) violations by the Council would constitute basis for seeking court enforcement of the Board's broad order in Building and Construction Trades Council of Fond du Lac County, et al, (Peters Construction Co.), 168 NLRB No. 81, further proceedings at this time would not effectuate the policies of the Act."

Left unanswered by these findings are such questions as why the violations which were the subject of the informal agreement, did not, themselves, form a predicate for proceeding to contempt on the prior litigated Board Order. More significantly, by concluding that future un-

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[21] Building and Construction Trades Council of Fond du Lac County (Roger W. Peters Construction Co.), 168 N.L.R.B. No. 81.

[22] General Counsel's Minutes, dated December 9, 1969.

lawful conduct would have to be remedied by proceeding under the prior Board Order rather than the more recent settlement, the General Counsel necessarily concedes the ineffectiveness of such agreements as a deterrent to repeated violations. Settlement agreements which recite the facts and, as a consequence, provide a meaningful remedy, will serve to deter repeated violations and reduce the Board's case load.[23] Moreover, there is no evidence whatsoever that a requested factual stipulation would impede the negotiations leading toward an agreement. Nor is there any reason to believe that charged parties would object to a recitation of the operative facts any more than they do regarding jurisdictional facts which are regularly included.

The General Counsel cites Textile Workers v. N.L.R.B., 294 F. 2d 734, 741 (D.C. Cir., 1961) in support of the proposition that the Agency need only set forth the reasons for rejecting the objections to satisfy the requirement of due process.[24] However, Textile Workers rests on the more fundamental basis that the reviewing court must have both a record containing the facts and the Agency's reasons for approving a settlement. The reasons without the operative facts are virtually meaningless in terms of judicial review. As the court stated:

> "In this situation, and limiting ourselves to the circumstances of this case, we are of opinion the order cannot stand without either (1) a reasonable oppor-

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[23] For a number of years, the F.T.C. has required both formal and informal settlement agreements to set forth a recital of essential facts. See, 16 C.F.R. Secs. 2.21, 2.31-34, 3.11(b)(2) (as amended October 20, 1969). The charging party's counsel was informed by a representative of the General Counsel of the F.T.C. that, in his opinion, the requirement of including facts in settlement agreements advanced the administration of the Act by reducing repeated violations. Undoubtedly, other federal and state agencies have had similar beneficial results with such a requirement.

[24] See page 15 of the General Counsel's brief in Concrete Materials of Georgia, supra.

> tunity for the Union to be heard on its objections or (2) a presentation on the record of reasons for acceptance of the stipulation as the basis for the order notwithstanding the Union's objections—a presentation which in light of those objections would enable a reviewing court to make an intelligent decision as to whether the Board's action was within the broad discretion we recognize the Board possesses.

In describing the factors which bear on whether or not a proposed settlement is to be approved and, thus, are relevant in an enforcement proceeding, the Board has stated:

> "In considering settlements, the Board must weigh such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concessions, and the conservation of the Board's resources. Moreover, the Board must evaluate the legal and factual merits disclosed by the administrative investigation to determine whether the allegations of violations in the complaint can be so clearly proved that no remedy, less than the maximum, can be accepted. In arriving at this decision, the discretion of the Board is recognized as broad." [25]

However, it is possibly impossible for a reviewing court to determine:

> 1. Whether the Board's evaluation of all these factors was arbitrary in a given case, or
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> 2. Whether the evidence supports the Board's conclusion as to "the legal and factual merits" of the case

without reference to the facts disclosed by the investigation. While it may be that the Board's discretion in this

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[25] Farmers Co-operative Gin Association, 168 NLRB No. 64 1967).

respect is broad—it is not absolute. The restricted nature of the Board's discretion necessarily gives rise to a corresponding right on the charging party's part to attack the exercise of that discretion. Such a right gives rise to a correlative right to the conclusions of fact upon which the Board rests its judgment. Consequently, the agency's policy of basing such conclusions on secret investigations and undisclosed recommendations while, at the same time, refusing to disclose to the charging party the basic facts at any stage of the proceeding, violates this right of effective judicial review in the most prejudicial manner.

Nor can a requirement that settlement agreements include basic facts place any extra burden on the General Counsel. It is the General Counsel's responsibility to marshal the facts for the Board's consideration. Normally, they are set out in a memorandum and no additional time would be involved in summarizing those in the agreement.

We are not asserting that in every case a minute detailing of the facts is required. Rather, Section 10(c) contemplates a recitation of facts sufficient to make out the essential elements of the violation. Obviously, it will vary with the nature of the violation and the complexity of the case. However, where motive is an essential element of the violation, as in 8(b)(4) cases, the facts must be sufficient to establish the basis for the inference of improper motive.

In addition, it is doubtful that Circuit Court would enforce a Board Order predicated on the record in this case which is silent as to the essential facts. Persuasive precedent for this proposition may be found in the First Circuit's opinion in NLRB v. Ochoa Fertilizer Corporation, 283 F. 2d 26 (1st Cir. 1960). In that case, the court was asked to enforce several broad Board Orders based on settlement agreements. The agreements there involved were silent as to the essential facts, as is the agreement in the instant case. In urging enforcement, the General

Counsel argued that if the court refused to enforce the Order ". . . no 'broad' Order can ever be entered by consent stipulations . . .". The court's response to this argument was:

> "This, of course, is absurd. All the Board has to do is to obtain from the respondent a stipulation disclosing facts which warrant broad relief. We will not go behind evidence which the parties state to be so. On the other hand, if the respondents are unwilling so to stipulate, there is no reason for the Board to complain that it cannot have such an injunction without a hearing. We can think of no irremediable disaster that will occur."

With respect to the fact that the Board's Order was based upon a settlement agreement, the court stated:

> "Nor does the willingness of a party, apprehended in an admitted offense, to bargain away by stipulation his future right to be free of injunctions covering situations not yet in esse seem to us an adequate substitute. (footnote omitted)"

The court concluded the opinion by stating, "we do not think that consent make a difference." It refuses to grant enforcement because the record was silent as to the facts necessary to warrant the court order.

The United States Supreme Court reversed the First Circuit's holding in Ochoa Fertilizer, but on a basis which leaves the lower court's holding intact with respect to the issue herein presented.[26] The Court held that the lower court was without authority to modify the Board's Order on grounds which "had not been urged before the Board, its members, agent or agency . . ." In contrast, here, the Charging Parties have and will continue to press their arguments with respect to the requirement of Section 10(c) that the Board's Order recite essential facts.

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[26] 368 U.S. 318 (1961).

The Supreme Court also indicated that in Ochoa Fertilizer all parties had consented to the Board's Order and to the entry of a court decree. The Court observed that given such consent by all parties, the Board was not required to make a supporting record because in such cases, the courts ". . . always affirmed without considering the merits of the cause." However, in the instant case, the Charging Parties have not consented to the entry of such an Order. Accordingly, in this case, clearly, a "supporting record" is required.

Even assuming, arguendo, that the Board is able to secure enforcement of its Order in this case, the sanction of contempt is beyond reach because of this record's fatal silence with respect to the facts.

Reference to a Ninth Circuit Court decision underscores the validity of this position. In NLRB v. Retail Clerks Union,[27] the Board had secured a decree enforcing a Board Order based on settlement agreement arising by virtue of the union's refusal to bargain in good faith. Subsequent to the enforcing order, the Board sought to have the union adjudged in contempt for insisting on bargaining with respect to store managers. The Board's position was that such individuals were supervisory employees and, accordingly, it was a violation of Section 8(b)(3) for the union to insist upon bargaining on their behalf. The following remarks of the Court are significant:

> "Since the order of the Board and the enforcement decree of this court had been entered by consent, there was nothing in the record and no findings of the Board to indicate whether location managers were supervisory employees within the meaning of the decree. This court was unwilling to resolve that question upon the basis of the affidavits submitted

[27] 208 F. 2d 165 (C.A. 9, 1953), adhered to on re-hearing, 211 F. 2d 759, cert. denied, 348 U.S. 839 (1954).

in the contempt proceeding. Accordingly, we returned the case to the Board to take testimony and make appropriate findings on this single question, prior to any further proceedings for enforcement." [28]

The lesson to be learned from the Retail Clerks case is simple and basic. Significant prejudice to the charging party arises by virtue of the Board's omission of basic facts in the record upon which enforcement and eventually contempt proceedings will be predicated. Even assuming that other courts are as willing as the Ninth Circuit was in Retail Clerks to return the case to the Board during the contempt proceedings for findings of fact, the prospects of being able to produce evidence a number of years after the determinative events are almost nonexistent. Witnesses are unavailable and memories fade. Moreover, there is no justification for putting the charging party to the substantial expense and inconvenience of producing witnesses a number of years after the events have transpired. This is especially so when the General Counsel could easily have set forth, by way of a stipulation, the essential facts and circumstances which gave rise to the initial Board Order, thereby obviating the necessity for a subsequent hearing.

The importance of setting forth the facts which gave rise to the cease and desist order is amply demonstrated in another Ninth Circuit case, N.L.R.B. v. Pacific Greyhound Lines, Inc., 106 F. 2d 867 (C.A. 9, 1939). In this case, the court had granted enforcement of a Board Order based on a fully litigated record as opposed to a settlement agreement. The enforced order required the employer to cease and desist from dominating or interfering with the administration of a certain labor organi-

[28] In Retail Clerks, current evidence as to the supervisory status of the managers was available when the case was remanded. In this case, however, the substantial lapse of time from the date of the unlawful picketing would be fatal. Witnesses are unavailable and memories fade.

zation. The Board subsequently filed a petition seeking to have the employer held in contempt. The employer defended on the basis that the conduct which gave rise to the petition for contempt was different than the conduct which gave rise to the initial Board Order. The court observed:

> "What we are to determine is whether there has been a contempt of our decree enforcing the Board's order. That is to say, whether what Greyhound did in reliance on the contract is something of the same nature it was shown to have been doing in the proceeding leading to the Board's order of December 18, 1936, to cease and desist, or whether it was something different in kind from that from which it was ordered to cease and desist. Obviously, one cannot either cease or desist from something one has not been doing."

The court then concludes:

> "It is our opinion that the issue between the Board and Greyhound tendered in this contempt proceeding, involving as it does the alleged acts of Greyhound, . . . is essentially different in kind from those raised in the proceeding in which our decree enforcing the Board's cease and desist order was granted; and that Greyhound's motion to dismiss the Board's petition on the ground that it does not allege facts constituting a contempt of this court must be granted . . . Since we regard the acts as constituting a new and different transaction, we find it unnecessary to pursue this round about procedure."

The unmistakable doctrine arising from the Pacific Greyhound case is that, before contempt will be ordered, the Board must prove that the conduct subsequent to the enforcing order was similar to the conduct which gave rise to the initial order. Such a showing is impossible when the record on enforcement contains no factual reci-

tation with respect to the conduct giving rise to the alleged violation.

A review of the above cited cases clearly indicates that essential rights will be denied to charging parties unless the proposed agreement in this case is amended to include a stipulation of the essential facts. Unless such facts are included, court enforcement is highly doubtful and contempt proceedings are doomed to failure. Neither administrative convenience nor barren claims to "expertise" can justify omission of the facts from the record in this case.

(d) The Indiscriminate Inclusion of Non-Admission Clauses.

Of the 32 agreements reviewed, 20 contained non-admission clauses. There are, however, no facts or circumstances in the other 12 cases which would serve to justify differing treatment.

The General Counsel's justification for the inclusion of non-admission clauses is equally perplexing. At page 9 of the Board brief to the Court, in Concrete Materials of Georgia, Inc., supra, it states:

> "As is often the case, the settlement agreement provided that the respondent union does not admit the commission of any unfair labor practices . . . However, since the agreement provides for the entry of a Board order and Court decree, the inclusion of this language does not in any way detract from the remedial effect of the agreement."

The fallacy of such circuitous reasoning is that Board and court orders which do not set forth the facts have virtually no remedial effect, as demonstrated above. Moreover, the question is not whether such clauses "detract" from the remedial aspects of such agreements but whether they affirmatively serve to insure compliance with the provisions of the Act. Thus, a reevaluation of the pur-

poses of non-admission clauses and their indiscriminate inclusion in settlements is long overdue.

III. The Particular Harm To This Charging Party As A Result of the Board's Prejudicial Settlement Procedures.

A comparison of the circumstances of this case with those of the 34 cases studied indicates that this Charging Party was particularly prejudiced by the application of the Board's settlement procedures.

A. The Remedy is Not Tailored To The Specific Unlawful Tactics of the Charged Party.

The Union did not restrict its unlawful conduct to simple secondary picketing. Rather, through a deliberate and well-planned campaign it endeavored to convey to its members and the general public an impression that the Charging Parties were primary employers. This assertion is based upon observation by the Charging Parties' supervisory personnel of events which occurred during the picketing. For example, on June 15, 1970, one store manager heard the pickets repeatedly tell customers that that Sears deliverymen were on strike and were picketing all Sears stores. The picket signs themselves stated that the Union was on strike against Sears.[29] In furtherance of this purposeful deception, the Union caused the pickets to appear in and about the charging party's facilities dressed in regular Sears uniforms. On several occasions the managerial personnel overheard pickets tell truck drivers that the dispute was with Sears. In fact, Re-

[29] Although Sears' name was later deleted from the picket signs, the belated effort served no purpose. The Union's unlawful campaign to mislead the public and its members had already accomplished its objective by that time. Moreover, merely changing the picket sign could have had no effect in light of the fact that the Union continued with its unlawful campaign in all other respects.

spondent was well aware of the fact that Sears and Terminal were total strangers to the primary dispute.

Aside from what managerial personnel observed, the Charging Parties can only postulate hypotheses as to additional essential evidence in the General Counsel's possession. For example, a rumor was circulating the last week of June that Respondent had called a meeting of Dependable Service Company Employees. In all probability, whatever transpired at such a meeting would have a significant impact on the appropriateness of the pending agreement. For instance, if employees of other employers were called to this meeting and instructed to refrain from handling or servicing Sears products, the appropriate remedy should be broadened to encompass such circumstances. Moreover, given such unlawful tactics, the remedy should name those employers and notices should be forwarded for posting in their establishments. In addition, it may well have been that other unions attended this meeting and that Respondent secured their consent to aid Respondent in its illegal strike. If so, any settlement agreement would have to preclude Respondent and these other organizations from acting in concert to further the unlawful picketing. Any meaningful remedy would have to name such organizations in the notice which would be mailed to their members. It is also highly likely that Respondent made significant admissions establishing its unlawful secondary object in the course of this or other meetings. Such admissions would increase the likelihood of a successful result had the case proceeded to a hearing and, correspondingly, decrease the appropriateness of accepting such an agreement in lieu of a hearing.

In a similar case,[30] the General Counsel and the Board inferentially acknowledged the appropriateness of the broad remedy in the circumstances present here. The

[30] American Federation of Musicians, Local 6, AFL-CIO (Theatrical Corporation of America) et al, 20-CC-863, 20-CC-880.

union had unlawfully placed the employer on its "unfair" list. The charging party asserted that the union should be required to advise the general public of the corrective action taken as part of the remedy. Neither the Board nor the General Counsel disagreed. Rather, footnote 1 of the Board's decision states:

> "With respect to the publication of notices, the General Counsel also pointed out that Respondents did announce in the newspaper that Theatrical Corporation of America . . . had been removed from the Union unfair list."

Unless similar action is required of the Union here, the effects of its unlawful conduct against Sears and Terminal will continue to linger in the minds of the general public—the mainstay of a retail enterprise.

In addition, the Union should be required to mail notices to each of its members. It is a universally recognized fact that, with the prevalence of check-off clauses, members seldom frequent the Union halls. Accordingly, merely posting the notice on such premises is necessarily ineffective publication. Moreover, the members are entitled to know, in simple understandable language, the precise unlawful conduct perpetrated by their representatives. Because the Union has indicated its continuing intention to picket neutral premises,[31] it is all the more

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[31] The Union's attorney stated to the District Court in Sears, Roebuck and Co. v. Solien, Nos. 20,407, 20,418:

> "I don't think that has been decided. I don't think they ever did decide that the picketing at the warehouse was unlawful . . . But, again, the reason we want that clause in there is so that there is no misunderstanding by anybody; so that we are not saying we are going to give up our right to primary picketing. All that stipulation does in two instances is repeat the statute: First it says what we won't do; second, what the stipulation says we can do." While these comments had reference to the stipulation entered in the Section 10(d) court action, there is every reason to believe the Union views the Board's settlement agreement containing virtually identical language in the same light."

necessary that each member know, precisely and factually, the unlawful conduct circumscribed. Accordingly, we submit that a simply phrased notice broadly distributed is essential to an effective remedy in this case.

B. The Inclusion of A Non-admission Clause Subverts the Purposes of the Act in the Circumstances of the Case.

In the instant case, this Union engaged in an illegal secondary boycott for a three-week period. Had the Respondent been content to restrict its unlawful conduct to improper picketing, perhaps a non-admission clause would be warranted. However, the Respondent went further in this case; it knowingly advertised to the public false claims that the Charging Parties were involved in the dispute.[32] And, it has expressed a clear intention to repeat such conduct when it would serve their purposes.

A settlement agreement which is silent as to the facts and contains a non-admission clause is totally ineffective in preventing a recurrence of such conduct. There is no reason to perpetuate in this case what appears to be the practice of indiscriminately including such clauses in agreements whenever the charged party requests them. Here, the Union knew that both Sears and Terminal were total strangers to the primary dispute. Nonetheless, it not

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[32] In rejecting this objection, the Regional Director states in his letter of September 29, 1970:

> "In the absence of evidence that there is any general public belief that Sears, Roebuck & Company's employees were on strike, specific remedial language suggested in your letter is inappropriate."

In light of the extensive publicity campaign conducted by the Union designed to convey the impression that Sears' and Terminal's employees were on strike, it is clear there is a serious deficiency in the Regional investigation. Given such a discrepancy between the true facts and what the Agency's file reflects, a reinvestigation is apparently required.

only picketed their Employers, but also instituted a campaign to convince its members and the public of their involvement—a fact Respondent knew to be false. By including a non-admission clause under such circumstances, and especially after a complaint has been issued, the Board leaves open to this Union a clear opportunity to repeat another three weeks of illegal picketing without any meaningful sanctions.

We submit that such ineffective "remedies" do not protect either private rights or the public interests. Moreover, the full circumstances of this case highlight the evil arising from loose enforcement practices. Here the Union was allowed to engage in clearly unlawful picketing for a period of three weeks and then "settle" the case without admitting that its conduct was unlawful and by merely posting a notice which the members either failed to understand or ignored altogether. Such cases have given rise to what is unfortunately a widely held belief among labor practitioners that there is little risk and much to be gained by engaging in secondary boycotts. This belief is fostered by the delay, some three weeks here, in securing Section 10(1) relief. We submit that such a psychology serves only to encourage repeated violations of Section 8(b)(4).

On the other hand, if a labor organization knew that given an unlawful strike, 10(1) injunctive relief would be promptly forthcoming and that a settlement agreement would require an admission and a statement of facts constituting the violation, meaningful incentive to comply with the law would exist. This beneficial attitude would be fostered if in addition to the foregoing, respondents knew that the victimized employer would be permitted to press, vigorously, through settlement negotiations, for the fullest and most effective remedies. Only then could it be

said that the Agency's remedies served to reduce the number of repeated violations.[33]

C. The Settlement Is Fatally Defective Because of An Absence of the Facts Giving Rise to the Unlawful Conduct.

A survey of the cases where objections were based on the inadequacy of the remedy reflects an approach on the part of the Agency which is naive at best. The Board's response to such objections in Pattern on Model Makers (Ronald J. Santo, Esq.), 7-CC-535 is typical:

> "We have fully and carefully considered the Charging Party's objections to the settlement agreement and are of the opinion that the inclusion of the 'non-Admission' clause in no way reduces the effectiveness of the cease and desist provisions of our o er or the entry of a consent order judgment without further notice to the Respondent. The file shows that the picketing had ceased prior to the execution of the settlement agreement by the Respondent and any further violation of the consent judgment would sub-

[33] Board Member Gerald A. Brown stated in a speech given at the 14th Annual Institute on Labor Law of the Southwestern Legal Foundation on November 2, 1967:

> "The need to concentrate on the prevention of unfair labor practices is clear. While most employers and unions obey the law, our steadily rising unfair labor practice case load proves that too many parties find it advantageous to defy the law. I am talking about flagrant violations and not borderline legal questions. Some employers and unions have been respondents in case after case over the years, involved in one hardnosed violation after the other. I am certain that this is due in large degree to remedial inadequacies."

We suggest to the General Counsel that the objectives set forth by Member Brown can only be realized by adopting the suggestions set forth above. The urgency for providing more effective remedies, as reflected by the above statement of Member Brown, underscores the necessity for prompt reformation of the Board settlement procedures to insure realization of that objective.

> ject the Respondent to a citation for contempt. We are satisfied under all the circumstances that the remedy provided is adequate and appropriate for the violations alleged and that it would effectuate the purposes of the Act to adopt the stipulation." [34]

Surely, the Agency must realize the virtual impossibility of securing contempt when the official "record" before the Court contains no facts as to the original violation.[35] Even assuming that a court would allow the Board to prove the facts behind the settlement for the purpose of establishing that later conduct was in contempt, there is little likelihood the evidence would be available. Moreover, assuming the settlement agreement is approved by Broad order and enforcement is sought in the courts, the charging party's protection under Section 10(l) restraining order is thereby automatically terminated.[36] Because the "record" before the court is silent as to the facts, it would not be possible for the court to grant Section 10(e) injunctive relief pending enforcement. Accordingly, although the Board repeatedly asserts such agreements provide full remedies, in fact, they provide no legally enforceable remedy.

The Regional Director's reasons for rejecting the Charging Party's objections in this case actually lend support to the arguments set forth herein. In his letter dated Sept. 39, 1970, he states:

> "Experience with a remedy in this form has demonstrated it to be effective in preventing repeated vio-

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[34] Such purely conclusionary language is of little help in aiding a court charged with the responsibilities of judicial review. Nor does it explain why in two other cases the Board approved without comment formal agreements wherein non-admission clauses were absent. See, e.g. *Teamsters Local 639 (Montgomery Ward & Co.)* 5-CC-427; *Congress of Independent Unions, Local 99 (Roy Kinder)*, 14-CC-578.

[35] See page , infra.

[36] Sears, Roebuck and Co. v. Local 419, Carpet Layers, 397 U.S. 655 (1970).

lations of Section 8(b)(4)(B) of the Act involving the same object."

This statement, of course, begs the questions. In a secondary boycott case, object is synonymous with motive. Motive can only be established by reference to the facts and circumstances surrounding the picketing. It seems ironic, therefore, that the Agency would admit that the effectiveness of this settlement agreement depends on establishing similarity of object but, at the same time, refuse to set forth the facts which would establish such an object.

In the instant case, not only is the agreement void with respect to the essential facts, the Complaint is equally silent. It may be true that in certain pre-complaint situations, the Board agent does not have sufficient facts to propose their inclusion in the agreement. However, where, as here, the Complaint has issued, the Regional Director's file contains all the essential facts of violation. In such circumstances, no hardship whatsoever would arise by imposing a requirement that those facts be set forth in the agreement as a stipulation of fact.

IV. Conclusion

In considering the Agency's settlement procedures, there is a guiding principle which is worthy of emphasis. In the instant case we are concerned with an adversary proceeding. In such proceedings, the Agency is not at liberty to sacrifice important procedural rights for the sake of administrative convenience. Such was the holding of the Sixth Circuit Court in NLRB v. Standard Transformer Co., 202 F.2d 846 (C.A. 6). In that case, the employer resisted an 8(a)(5) charge on the basis that the Regional Director refused to conduct a hearing with respect to challenged ballots. The employers theory was that the certification was based on findings of fact, although no hearing was held to support those findings, and the respondent had no opportunity to be heard with respect

thereto. In rejecting these contentions, the Sixth Circuit Court distinguished investigatory proceedings under Section 9 of the Act from adversary unfair labor practice proceedings. The Court stated, on page 2590:

> "In N.L.R.B. v. Indiana & Michigan Electric Co., 318 U.S. 9, at p. 28, the Supreme Court stated the general fundamental principles with respect to findings of fact by the Board, saying that the reviewing court is given discretion to see that before a party's rights are foreclosed his case has been fairly heard, and 'Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard and weighed.' Such is the well accepted rule in adversary proceedings."

It is clear from the language of both Standard Transformer Co. and the rules set forth by the Supreme Court in Michigan Electric that in adversary proceedings findings of fact must be predicated upon conclusions which include both supporting and impeaching evidence. It is equally clear that the Board's rules with respect to settlement procedures violate this long standing and fundamental doctrine.

The charging party in the captioned matter does not stand alone in questioning the basic fairness and legality of the Board's settlement procedures. Presently pending in the Fifth Circuit are two separate cases in which petitioners call into question the Board's settlement procedures.[37] Moreover, these procedural rules have been the subject of extensive debate by the American Bar Association.[38] It can only be expected that unless the Agency

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[37] Edwards Transportation Co. v. N.L.R.B., No. 30132; Concrete Materials of Georgia, Inc., NLRB, Nos. 29559, 29606.

[38] Compare the views of the American Bar Association Administrative Law Section with the views of the Labor Relations Law Section (1968).

undertakes an in-depth study of its settlement procedures, and specifically the impact of present rules upon the fundamental rights of charging parties leading toward a revision of those rules, charging parties will be forced to continue to seek vindication of its rights through the courts.

While we recognize that in this respect the General Counsel is not the final arbiter of the Board's rules with respect to settlement procedures, he does have a defined sphere of authority as the result of the enactment of Section 3(d) of the Act. Under the provisions of this Section, the General Counsel is responsible for the drafting of the document, and secondly, has authority to specify what terms and stipulations the agreement shall contain. In addition, the General Counsel is empowered in each case involving a previous agreement to make recommendations to the Board. Accordingly, within this sphere of authority, we submit that the General Counsel should undertake an examination of the Agency's present policies and practices, with special emphasis of the prejudicial effect in the instant case, and give his most serious consideration to changing those policies falling within his authority as defined by Section 3(d) of the Act, and proposing other changes to the Board regarding rules falling beyond his defined statutory authority. We also submit that such revisions along the lines suggested herein could only increase the effectiveness of the Agency in preventing industrial strife, and further the purposes of the Act by reducing the inordinate number of unfair labor practices which presently escape meaningful remedy.

EXHIBIT 1S

(Letterhead of)

LEDERER, FOX AND GROVE
Attorneys at Law
Chicago Title and Trust Building
111 West Washington Street
Chicago, Illinois 60602

February 23, 1971

Mr. Dominick Manoli
Associate General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Re: Sears, Roebuck and Co.
Case Nos.14-CC-603 & 604

Dear Mr. Manoli:

Regarding Exhibits A and B attached to the Supplemental Objections in the captioned matter, in certain cases the documents forwarded were silent with respect to whether or not Section 10(1) relief was sought. I had assumed that such silence would indicate that Section 10(1) relief was not sought. However, it subsequently occurred to me that the Regions could have pursued Section 10(1) relief in those cases and that this fact would not necessarily appear in the material forwarded by your office. Accordingly, I have called the Regions involved to verify the fact that Section 10(1) relief had not been sought where such information appears on Exhibits A and B.

As a result of the verification, certain changes in Exhibits A and B are in order. Contrary to what appears on these exhibits, in the following named cases Section 10(1) relief was sought by the Region and granted by the court:

1. Locals 563 & 126, IBT (Oshkosh Ready-Mix) 30-CC-97
2. Local 626 and 942, IBT (Ramona's Mexican Food Products, Inc.) 31-CB-279; 31-CB-296; 31-CC-123; 31-CC-134
3. Local 379, IBT (U.S. Gypsum Co.) 1-CC-650

In the other cases the Regional files did not reflect any inaccuracies with respect to the information appearing on the exhibits.

Because of the significance of the issues presented in the Supplemental Objections and the important bearing which the cases in Exhibits A and B have upon these issues, I thought it appropriate to bring to your attention the above-mentioned revisions.

Thank you for your cooperation in forwarding the basic material and for your attention to the matters raised above.

Very truly yours,

Theodore J. Tierney
for Lederer, Fox and Grove

TJT:af

EXHIBIT 1T

(Letterhead of)

NATIONAL LABOR RELATIONS BOARD
Office of The General Counsel
Washington, D.C. 20570

(Received—Mar. 22 1971)

March 19, 1971

Jerry Kronenberg, Esquire
Borovsky, Ehlich & Kronenberg
120 So. LaSalle Street
Chicago, Illinois 60603

Gerald Tockman, Esquire
McMahon & Berger
1153 Pierre Laclede Building
Forsyth at Hanley
St. Louis, Missouri 63105

Gerard C. Smetana, Esquire
927 South Homan Avenue
Chicago, Illinois 60607

Lawrence M. Cohen and Theodore J. Tierney, Esquires
Lederer, Fox and Grove
111 West Washington St.
Chicago, Illinois 60602

Daniel J. Sullivan, Esquire
Lewis, Rice, Tucker, Allen and Chubb
1555 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101

Re: Miscellaneous Drivers and Helpers Union, Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Be-Rite Delivery Service, Inc.) Case No. 14-CC-603

Miscellaneous Drivers and Helpers Union, Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Terminal Freight Cooperative Association and Terminal Freight Handling Company) Case No. 14-CC-604

Gentlemen:

Pursuant to Section 101.9(c)(2) of the Board's Statements of Procedures, this is to inform you that the Formal Settlement Stipulation in the subject cases approved by Regional Director Joseph H. Solien has been reviewed. The objections to the Settlement Stipulation filed with the Regional Director, as well as the supplemental objections, have been carefully considered. As the Settlement Stipulation provides a full remedy for the violations alleged in the Consolidated Complaint and as the objections are lacking in merit, I have decided to approve the Formal Settlement Stipulation, notwithstanding your objections. Accordingly, I am this date submitting the Settlement Stipulation to the Board for its approval.

With particular respect to the supplemental objections which were filed, these objections to the Settlement Stipulation are being rejected for the following reasons. As to objection 1, the nonadmission clause contained in paragraph 15 of the Stipulation does not impair our ability to obtain enforcement of the Board's Order or, contrary to the Charging Parties' contention, our ability to proceed in contempt against the Respondent in the event of noncompliance with, or subsequent violation of, the Board Order and Court Judgment. As to objection 2, sufficient facts to support the Board Order and Court Judgment are set forth in the documents constituting the record.

The facts with respect to Respondent's unfair labor practice conduct are set forth in the allegations of the complaint which stand undenied. As to objection 3, the cease and desist provisions adequately cover the violations alleged in the complaint, and broadly proscribe (i) and (ii) conduct with an object of forcing or requiring neutrals to cease doing business with Be-Rite and Sears. We do not believe it is necessary to specify in the Order the various conduct Respondent engaged in which constituted the unfair labor practices in these cases. As to objection 4, the

Notices conform to standard Board language. The Stipulation requires the Respondent to post the Notices at its business offices and meeting halls, including all places where notices to members are customarily posted. In addition, the Respondent is required to sign copies of the Notices for posting by the neutral employers involved, if they are willing, at places where notices to their employees are customarily posted. In the circumstances, we do not believe broader distribution or publication of the Notices is warranted.

Your request that submission of the Settlement Stipulation to the Board be deferred pending the outcome of the litigation now before the Eighth Circuit involving the Charging Parties' rights to participate in settlement negotiations and to examine evidence in the Board's investigative files is hereby denied, particularly in view of the favorable decision we received from the District Court.

Pursuant to Section 101.9(c)(2) of the Board's Statements of Procedures you have the right to file a further statement in support of your objections to the Formal Settlement Stipulation with the Board. Any such statement must be received by the Board by the close of business March 30, 1971.

Sincerely yours,

/s/ Arnold Ordman
Arnold Ordman
General Counsel

EXHIBIT V

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * (Caption—No. 14-CC-603) * *
* * (Caption—No. 14-CC-604) * *

MOTION TO TOLL TIME TO FILE FURTHER STATEMENT IN SUPPORT OF OBJECTIONS TO SETTLEMENT STIPULATION

(Received—Mar. 5, 1971)

Pending the decision of the Board on the Charging Party's Motion to Stay Submission of Settlement Agreement or, Alternatively, to Stay Processing of Settlement Agreement, the Charging Party requests that the Board toll the time to file a Further Statement in Support of Objections to Settlement Stipulation and further requests that the Board grant it 30 days from the date said Motion to Stay Submission is determined, to submit its Further Statement in Support of Objections to the Settlement Stipulation.

No party will be harmed by the granting of the extension, and the extension is required because of the voluminous nature of the documents and exhibits to be analyzed, the critical importance of this matter—to the public as

well as to the parties involved—and the necessity for a full and detailed exposition of all the issues.

Respectfully submitted,

Jerry Kronenberg
Borovsky, Ehrlich & Kronenberg
120 So. LaSalle St.
Chicago, Illinois 60603
Attorneys for Terminal Freight Cooperative Association and Terminal Freight Handling Company

Gerard C. Smetana
925 South Homan Avenue
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Lawrence M. Cohen
Herbert M. Berman
Lederer, Fox and Grove
111 West Washington St.
Chicago, Illinois 60602

Attorneys for Sears, Roebuck and Co.

(Letterhead of)

LEDERER, FOX and GROVE
Attorneys At Law
Chicago Title and Trust Building
111 West Washington Street
Chicago, Illinois 60602

Mr. George Leet
Associate Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D. C. 20570

April 6, 1971

RE: Miscellaneous Drivers and Helpers Union, Local 610 — Case Nos. 14-CC-603 and 604

Dear George:

This will confirm our telephone conversation of last week with respect to our Motions of March 26, 1971 requesting a tolling of the time for filing, pursuant to Section 101.9 (c) (2) of the Board's Rules, a further statement with the Board of the charging parties' objections to the proposed settlement agreement in the captioned cases.

You advised me that the time for filing such a statement would be extended until the Eighth Circuit issues its decision in Sears, Roebuck and Co. v. Solien (Nos. 20462 and 20472). At the time that decision issues, I will so advise you and, if the Court has ruled against the Plaintiffs, a reasonable time will then be provided charging parties for the submission of any further statement.

If this is not in accord with the position of the Board, will you please let me know immediately.

Very truly yours,

Lawrence M. Cohen
for Lederer, Fox and Grove
Attorneys for Sears, Roebuck and Co.

LMC:FW

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—No. 14-CC-603) * *
* * (Caption—No. 14-CC-604) * *

MOTION TO STAY SUBMISSION OF SETTLEMENT AGREEMENT OR, ALTERNATIVELY, TO STAY PROCESSING OF SETTLEMENT AGREEMENT.

Sears, Roebuck and Co., Terminal Freight Cooperative Association and Terminal Freight Handling Company (hereinafter collectively referred to as the Charging Party) hereby request the Board to stay submission and withhold acceptance of the Stipulation of Formal Settlement referred to it by the General Counsel on March 19, 1971, pending the decision of the Court of Appeals for the Eighth Circuit in Sears, Roebuck and Co. v. Solien (Nos. 20462 and 20472), or alternatively in the event that said Motion is denied, to stay processing of said Stipulation until a decision has been rendered by the Court of Appeals in the above matter, and in either case to also permit the filing of a further statement in support of objections, 30 days after the decision of the Court.

This Motion is based upon the following sound and substantial considerations:

1. Even though Section 101.9(c)(2) of the Board's Statements of Procedure provides that the General Counsel, after approval of a proposed formal settlement agreement, shall submit it to the Board, the Board has the discretion, especially under the compelling circumstances present here, to stay such submission and withhold its acceptance of the transfer of the agreement. In its present posture, the Board here cannot properly review the Stipulation. The Complaint in Case Nos. 20462 and 20472 alleged that the General Counsel, acting in his prosecutorial capacity as defined in Section 3(d) of the National Labor Relations Act, unlawfully denied the Charging Party participatory rights in the negotiations leading to the Settle-

ment Stipulation. The General Counsel's action constituted a final determination; neither the Board nor a Circuit Court under Section 10(e) and (f) of the Act may review prosecutorial decisions of the General Counsel. See Frito Co. v. N. L. R. B., 330 F. 2d 458 (9th Cir., 1964). Accordingly, pending the Court's determination as to the propriety of the actions of the General Counsel, the Stipulation should remain within the jurisdiction of the General Counsel.

2. A decision by the Court that the Charging Party is entitled to participate in settlement negotiations would necessarily require that any approved settlement stipulation be set aside and that negotiations, with the participation of the Charging Party, be reinstated. Thus, the Board's acceptance of this Settlement Stipulation prior to the decision of the Court in Sears would be, at best, an empty exercise of jurisdiction; any action taken by the Board prior to the decision would be premature and abortive.

3. The General Counsel denied the Charging Party's request to defer submission of the Stipulation to the Board on the basis "of the favorable decision . . . received from the District Court," in Case No. 70 C 356(1). Although the General Counsel thus implies that the position of the Charging Party is meretricious and not deserving of consideration, the very opposite is true. Indeed, the position of the General Counsel was specifically rejected by the Eighth Circuit. That Court flatly denied the General Counsel's Motion for Summary Affirmance of the "favorable decision" of the District Court, thereby destroying the very basis of the General Counsel's decision not to defer submission of the Stipulation.

4. The question of the right of the Charging Party to participate in settlement negotiations, at issue in Case Nos. 20462 and 20472, is one of widespread significance.[1]

[1] The significance of the issues involved in this matter are well illustrated by the enclosed Appellant's Brief in Opposition to Mo-

For example, it is estimated that ninety per cent of charges found meritorious are settled. Thus, the settlement processes are the means by which, for the most part, the National Labor Relations Act is administrated, public rights vindicated and the private rights of respondents and charging parties determined. To illustrate the effect of a decision by the Court concerning the rights of parties to settlements, we have attached an analysis (Exhibits A and B) of all settlement agreements involving Section 8 (b) (4) of the Act where objections were filed in the last three fiscal years. That analysis demonstrates that questions concerning the rights of charging parties with respect to settlement agreements are not isolated, but arise time and time again. In view of this overriding significance of the issues raised in this matter, it would be in the best interests of the Board, as well as of all parties involved, to stay transfer of the Stipulation until the Court has had an opportunity to render its decision. Precipitous action taken now, outside the context of a relevant judicial determination, can only impede and confound the ultimate resolution of this matter; it should be avoided at all costs.

5. As corporate citizens, vitally interested and vitally affected by the administration of the National Labor Relations Act, we welcome an opportunity, in accordance with the suggestion of the Board's Liaison Committee, to make constructive suggestions concerning the administration of the Act. One significant area of national concern is the ineffectiveness of Board settlement agreements, particularly in the 8(b)(4) area. Sears, Roebuck and Co., and Terminal Freight Cooperative Association, which consists of 89 companies operating out of 39 freight terminals, have had considerable experience with secondary boycott situations. That experience can best be presented to the

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tion for Summary Affirmance, which we commend to the attention of the Board for a full review of the issues involved in Case Nos. 20462 and 20472.

Board in the context of what we hope will be an elucidating court decision on the rights of charging parties in the settlement area.

6. We wish to call to the attention of the Board the decision of the United States Court of Appeals for the Fifth Circuit in Concrete Materials of Georgia, Inc. v. N.L.R.B. (March 17, 1971), No. 29559, wherein the Court said that:

> Under this analysis, it is clear that the charging party has the right to contest any proposed settlement between the Regional Director and the charged party both by objecting to it before the Board and by petitioning for review if the Board enters an order over his objection based upon the agreement. To insure that the charging party's objections are considered by the Board, we feel that the charging party must be afforded (1) an evidentiary hearing on any material issues of disputed fact presented by his objections, see N.L.R.B. v. Brush-Moore Newspapers, Inc., 6 Cir., 1969, 413 F. 2d 809, 811, cert. den. 396 U.S. 1002; and (2) a presentation on the record of reasons for acceptance of the settlement agreement as the basis for the order notwithstanding his objection.

To date the Charging Party has no knowledge of the extent of the material issues involved in the settlement agreement, as it was not a party to the settlement negotiations or given certain information it requested. Therefore, at this juncture, the Charging Party is not even in a position to request an evidentiary hearing, as required by Concrete Materials; and must await the decision of the Court of Appeals for the Eighth Circuit to be fully advised of its rights with respect to the settlement agreement.

7. Because of the complexity of the issues here involved, in the event that the Court in Case Nos. 20462 and

20472 rejects our contentions, we request a reasonable period of thirty days to file, pursuant to Section 101.9(c)(2), a further statement in support of our objections to the Stipulation. We base this request on the following compelling considerations:

(a) The documents to be submitted and the exhibits to be attached constitute a more voluminous record than is found in most litigated cases. In addition, we must have the opportunity to evaluate fully our position, in light of the Court's decision.

(b) While normally, delay might be unwise or injurious to a party, in the posture of this case, no party—certainly neither the Union nor the Board will in anyway be harmed by further delay. As a matter of fact, any delay encountered thus far in the litigation of this case in Court cannot be attributed to the efforts of Charging Party, but to those of the General Counsel. For example, in Case Nos. 20462 and 20472, the General Counsel took more than 70 days to file its brief in the Court of Appeals. The Charging Party submitted its reply brief in 6 days and consolidated its opposition to the Motion for Summary Affirmance and its brief on the merits in one document so as not to lengthen the briefing schedule. It also requested the Court to grant an expedited briefing schedule in order not to delay this matter any further.

(c) This case presents an excellent vehicle for the Board to use to review its settlement procedures in the hope of achieving more effective settlement agreements. As we can estimate, in view of the fact that the Eighth Circuit normally issues opinions within two or three months after oral argument, the Court's decision will come down within six weeks, a minor and unprejudicial delay at this point may result in a significant opportunity by the Board to engage in full and constructive settlement procedures.

WHEREFORE, it is hereby requested that the Board stay submission and withhold acceptance of the Stipulation of Formal Settlement referred to it by the General Counsel on March 19, 1971, pending the decision of the Court of Appeals for the Eighth Circuit in Sears, Roebuck and Co. v. Solien (Nos. 20462 and 20472), or, alternatively in the event that said Motion is denied, stay processing of said Stipulation until a decision has been rendered by the Court of Appeals in the above matter.

Respectfully submitted,

GERALD C. SMETANA
925 South Homan Avenue
Chicago, Illinois 60607

LAWRENCE M. COHEN,
HERBERT M. BERMAN
LEDERER, FOX AND GROVE
111 West Washington Street
Chicago, Illinois 60602
Attorneys for Sears, Roebuck and Co.

JERRY KRONENBERG
BOROVSKY, EHRLICH & KRONENBERG
120 So. LaSalle St.
Chicago, Illinois 60603
Attorneys for Terminal Freight Cooperative Association and Terminal Freight Handling Company.

UNITED STATES DISTRICT COURT
Eastern District of Missouri
Office of the Clerk

St. Louis, Missouri 63101

October 12, 1971

Re: Civil Case No. 70 C 317 (1)
Joseph H. Solien, etc. vs Misc. Drivers and Helpers Union, etc., Terminal Freight Handling Co., et al.

Gentlemen:

Under this date the following action occurred in the above styled case—

BEFORE JUDGE MEREDITH

Motion of Terminal Freight Handling Company and Terminal Freight Cooperative Association, charging parties herein, to accept and consider their objections to the stipulation previously approved by the Court and for an order rescinding, or amending, such stipulation, heretofore filed on Sept. 16th, is now denied.

Very truly yours,

Leo C. DeVoto, Jr., Clerk

by /s/ Helen R. Smith, Deputy

UNITED STATES DISTRICT COURT

* * (Caption—Civil No. 70 C 317(1)) * *

NOTICE OF APPEAL

Notice is hereby given that Terminal Freight Handling Company and Terminal Freight Cooperative Association, charging parties herein, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order of this Court entered on October 12, 1971, denying charging parties' Motion to accept and consider their objections to the Stipulation previously approved by the Court and for an Order rescinding or amending such Stipulation.

Jerry Kronenberg
Borovsky, Ehrlich & Kronenberg
120 So. LaSalle Street, Suit 1820
Chicago, Illinois 60603

Murray F. Bahm
Borovsky, Ehrlich & Kronenberg
120 So. LaSalle Street, Suite 1820
Chicago, Illinois 60603

Gerald Tockman
7701 Forsyth Boulevard, Suite 1153
St. Louis, Missouri 63105
Attorneys for Terminal Freight Handling Company and Terminal Freight Cooperative Association

November 2, 1971.

CERTIFICATION OF SERVICE

This is to certify the above and foregoing Notice of Appeal was duly served upon the attorneys of record for all parties to the above cause by depositing copies of same in envelopes addressed to such attorneys at their addresses as disclosed by the pleadings herein and shown as follows, with postage fully prepaid and by depositing said envelopes in a U.S. Post Office mail box in St. Louis, Missouri, this 2nd day of November, 1971.

Marcel Mallet-Prevost, Esq.
Assistant General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Marvin Roth, Esq.
National Labor Relations Board
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Joseph R. Solien, Esq.
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Wiley, Craig, Armbruster & Wilburn
7 North 7th Street
St. Louis, Missouri 63101

Gerald Tockman

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1971

No. 71-1650

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellee,

v.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent-Appellee,

TERMINAL FREIGHT HANDLING COMPANY AND TERMINAL FREIGHT COOPERATIVE ASSOCIATION,

Appellants.

Appeal from the United States District Court
for the Eastern District of Missouri

RESPONDENT-APPELLEE LOCAL 610'S MOTION TO AFFIRM ORDER OF U. S. DISTRICT COURT OR, IN THE ALTERNATIVE, TO DISMISS APPEAL

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT:

On October 12, 1971, in that Court's Civil No. 70C 317(1) Hon. James Meredith, U. S. District Judge for the U. S. District Court for the Eastern District of Missouri, Eastern Division, denied the Motion of Terminal Freight Handling Company and Terminal Freight Cooperative Association (hereafter collectively referred to as "Terminal") to accept and consider their objec-

tions to the Stipulation previously approved by Judge Meredith and for an Order rescinding or amending such Stipulation. Terminal has appealed that Order to this Court. Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent-Appellee (hereafter called "Local 610") by attorney under the provisions of Rules 8 and 9 of the Rules of this Court move that said Order of said U. S. District Court be affirmed or, in the alternative that Terminal's Appeal be dismissed and for grounds for said Motion states:

1. That on March 12, 1971 this Court issued its decision in Nos. 20407 and 20418 (and officially reported as 440 F. 2d 124) which was an appeal involving the same cases (Civil No. 70 C 317 (1)) and the same parties, except that Sears, Roebuck and Co., a co-appellant in Consolidated Nos. 20,407 and 20,418 and hereafter referred to as "Sears" has elected not to join with Terminal in the proceedings involved in the current appeal. In that Decision, this Court affirmed the judgment of the District Court denying Sears and Terminal full party status and the right to intervene in 10(1) injunction proceedings before the District Court.

2. Sears and Terminal filed a Petition for Certiorari in the United States Supreme Court, docketed as that Court's No. 1588, and on June 7, 1971 that Court denied said Petition for Certiorari. Thereafter, Sears and Terminal filed successive Motions for Extension of Time within which to file a Petition for Rehearing with the United States Supreme Court, which Petition for Rehearing was finally filed on or about November 3, 1971. On November 16, 1971 the United States Supreme Court denied that Petition for Rehearing.

3. In the meantime on or about September 14, 1971 and during the periods during which Sears and Terminal were requesting and being granted extensions of time

within which to file their Petition for Rehearing in the United States Supreme Court, Terminal filed with Judge Meredith, in the same case from which it had appealed to this Court in this Court's Nos. 20407 and 20418, what it termed "Motion of Charging Parties to Accept and Consider Their Objections to the Stipulation Previously Approved by the Court herein and for an Order Rescinding or Amending Such Stipulation.", a copy of said Motion being attached hereto as Exhibit A.

4. Local 610, by its attorney, filed a Statement in Opposition to said Motion, a copy of which is attached hereto as Exhibit B. Thereafter, Terminal filed its Reply Brief, attached hereto as Exhibit C, on the 12th day of October, 1971. Judge Meredith entered his Order denying said Motion, a copy of which is attached hereto as Exhibit D.

5. In said above-described Petition for Rehearing filed with the United States Supreme Court Terminal and Sears, after stating in said Petition that the Decision of this Court in Nos. 20407 and 20418 referred to as "Solien I", and the Decision of this Court in *Terminal Freight Handling Co., et al* v. *Solien*, 444 F. 2d 699 (No. 71-1042) (CA 8, June 18, 1971) as "Solien II", informed the Supreme Court in footnote 2 of said Petition for Rehearing, attached hereto as Exhibit E:

> "In an effort to harmonize these decisions, Petitioners Terminal Freight Cooperative Association and Terminal Freight Handling Co. filed a motion for clarification of Solien II in the Eighth Circuit on July 30, 1971. The Court denied that motion on August 13, 1971. Hoping to achieve the same result in another way, the same Petitioners on September 16, 1971 proceeded to the district court, the affirmance of whose decision in the Eighth Circuit became Solien I, and, on the strength of the new matter decided in Solien II, filed a motion seeking to test

the impact of the one case on the other. The district court denied this motion on October 12, 1971."

On or about November 2, 1971 Terminal filed in the United States Supreme Court a Petition for Certiorari to this Court in Solien No. II.

6. That for the reasons set out above and in the Statement in Opposition attached hereto as Exhibit B, Respondent-Appellee Local 610 submits that the questions presented for review by this appeal are so insubstantial as not to need further argument and said appeal is, in fact, frivolous and entirely without merit.

WHEREFORE, Respondent-Appellee moves that the Order entered by the U. S. District Court, Eastern Division, on October 12, 1971 (attached hereto as Exhibit D), and from which Terminal has filed its appeal, be affidmed or, in the alternative, that said appeal be dismissed.

Respectfully submitted:

WILEY, CRAIG, ARMBRUSTER & WILBURN

By: /s/ Norman W. Armbruster
NORMAN W. ARMBRUSTER
7 North Seventh Street
St. Louis, Missouri 63101
314-231-1018
Attorneys for Respondent-Appellee Local No. 610

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 71-1650

[Title Omitted]

MOTION OF PETITIONER-APPELLEE
TO DISMISS APPEAL

To the Honorable, the Judges of the United States Court of Appeals for the Eighth Circuit:

Petitioner-Appellee Joseph H. Solien, Regional Director of the Fourteenth Region of the National Labor Relations Board, respectfully moves this Court, pursuant to Rule 2, Federal Rules of Appellate Procedure, to summarily dismiss the appeal herein on the following grounds:

1. Appellants lack standing to prosecute the appeal.

2. Appellants' lack of standing to prosecute this appeal was adjudicated in *Solien* v. *Miscellaneous Drivers and Helpers Union Local No. 610*, 440 F. 2d 124 (C.A. 8, 1970), cert. denied 403 U.S. 905, reh. denied —— U. S. —— (November 15, 1971).

3. The appeal is from an order of the district court denying appellants' untimely motion to alter or amend the judgment of the district court; therefore, as the motion was filed out of time, the appeal presents nothing for review by this Court.

The grounds for this motion are more fully set forth in the attached memorandum.

WHEREFORE, Petitioner-Appellee prays ~~that~~ the appeal be summarily dismissed.

PETER G. NASH,
General Counsel,
JULIUS G. SEROT,
Assistant General Counsel,
MARVIN ROTH,
Attorney,
National Labor Relations Board
Washington, D. C. 20570

Dated at Washington, D. C.
this 3rd day of December
1971

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
SEPTEMBER TERM, 1971

No. 71-1650

[Title Omitted]

Appeal from the United States District Court
for the Eastern District of Missouri

Before GIBSON, LAY, and ROSS, Circuit Judges

The Court has carefully considered a motion filed by appellee Miscellaneous Drivers and Helpers Union, Local No. 610, requesting summary affirmance of an order entered by a judge of the United States District Court for the Eastern District of Missouri on October 12, 1971.

In connection with the motion the Court has had the benefit of the printed appendix and brief filed by counsel for appellant.

Being fully advised in the premises it is now here ordered that the motion of appellee, Miscellaneous Drivers and Helpers Union, Local No. 610, requesting summary affirmance of the judgment of the District Court be and it is hereby granted.

Judgment affirmed.

STATUTE INVOLVED.

NATIONAL LABOR RELATIONS ACT.

(61 Stat. 136, 29 U. S. C. Sect. 151, et seq.)

* * * *

Sec. 10(l), 29 U. S. C. § 160(l):

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of

such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

FILED
JAN 14 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO.,

Petitioners,

vs.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

BRIEF AMICUS CURIAE ON BEHALF OF THE PHILLIPS PLUMBING AND HEATING COMPANY IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.*

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Chicago, Illinois,
Attorney for the Phillips Plumbing and Heating Company.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

BRIEF AMICUS CURIAE ON BEHALF OF THE PHILLIPS PLUMBING AND HEATING COMPANY IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.*

*Pursuant to Rule 42(1) of the Rules of this Court, oral consent has been received from all parties hereto to the filing of this brief *amicus curiae* and written consents are being lodged with the Clerk of the Court.

I.

INTEREST OF THE AMICUS CURIAE

This brief is filed on behalf of Phillips' Plumbing and Heating Company ("Phillips"), a small employer located in Davenport, Iowa. Phillips was recently subjected to a devastating secondary boycott and, as a result, filed unfair labor practice charges with the National Labor Relations Board in order to seek the protection afforded by Section 10(1) of the National Labor Relations Act.[1]

As in the instant case, the Regional Director of the Board found that there was reasonable cause to believe that Phillips' charges were true. Nevertheless, Phillips, like Terminal and Sears in the present case, was not afforded the relief contemplated by Section 10(1). In addition, the Board negotiated a settlement agreement without the charging party's participation. The secondary boycott was continued at Phillips and no injunctive relief was sought. Phillips, as a result, lost valuable contracts in business which it may never be possible to recoup.

Counsel for Phillips is a large national law firm located in Chicago, Illinois representing many employers, both small and large, throughout the United States. The above experience of Phillips, in Counsel's experience, is by no means unique. Rather, it is part of a pervasive practice followed uniformly by the Board. Those cases in which

1. *Local Union No. 562, Affiliated with the U. A. of Journeyman & Apprentices of the U. S. & Canada, AFL-CIO (George Koch Sons, Inc.)*, N. L. R. B. Case No. 17-CC-467.

the Board fails to carry out the statutory command are the rule rather than the exception in Section 10(1) proceedings.[2]

II.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

A. The Problems Raised in the Administration of Section 10(1) of the Act Are Exemplified by This Case, and Should Be Ruled Upon by This Court to Effectuate the Purposes of the Act.

As noted above, the experience of Terminal and Sears here is typical of a recurrent pattern utilized by the Board in its administration of the Act. The resultant harm experienced by employers, whose only effective protection from secondary boycotts is Section 10(1),[3] is widespread and substantial. Since most charging parties are small employers who can afford neither prolonged picketing or expensive litigation,[4] this case is an appropriate vehicle for this Court to now resolve the present controversy.

---

2. As the Court below found, Board Regional Directors seek 10(1) injunctive relief in only *one-quarter* of all cases where there has been a finding of reasonable cause to believe there has been a secondary boycott. App. to Pet. for Cert., p. 8, n. 9.

3. That a Section 10(1) injunction is the only effective remedy is adequately demonstrated by the substantial delays experienced when alternative routes are followed. An employer who is experiencing secondary pressures cannot withstand those pressures through the lengthy ordeal of investigation of the charge and issuance of a complaint, of the hearing before the Trial Examiner and a ruling upon his decision by the Board, and of finally enforcing the Board's order in a court of appeals. Through participation in the Board's procedures, Phillips and others have realized not only the costly delays but also their paralyzing economic effect upon the employer.

4. For example, more than 50% of the charges involving Section 10(1) that were filed in 1969 were filed by employers with less than 30 employees. *33rd Annual Report of the National Labor Relations Board (1968)*, Table 18, pp. 238-239.

B. The Present Case Arises in the Contexts of Other Significant Issues Which This Court Should Also Consider.

The present case is being submitted to the Court as part of a multi-faceted dispute raising numerous significant questions affecting the rights of charging parties generally. These questions are also recurrent and, for the reasons previously discussed, likely to continue to escape review by this Court. Phillips therefore concurs with the position of Terminal that the present case should be considered in conjunction with these related matters. Petitions for certiorari in these cases have recently been filed with this Court,[5] and to underscore the overall importance of this case, identical versions of the present brief are also being filed therein.

CONCLUSION.

For the aforegoing reasons, Phillips requests this Court to grant the instant petition for certiorari.

Respectfully submitted,

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Chicago, Illinois,

RALPH A. MORRIS,
Attorney for the Phillips Plumbing and Heating Company.

---

5. *Sears, Roebuck and Co.* v. *Solien*, No. .....; and *Terminal Freight Cooperative Association* v. *Solien*, No. .....

SUPREME COURT, U.S.
Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM

No. ——— 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION

and

TERMINAL FREIGHT HANDLING CO.,

Petitioners,

v.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

MOTION TO INTERVENE ON BEHALF OF SEARS, ROEBUCK & CO.

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

IN THE

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No. .....

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and

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and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

MOTION TO INTERVENE ON BEHALF OF SEARS, ROEBUCK & CO.

Sears, Roebuck & Co. ("Sears") hereby respectfully moves to intervene in this case. Sears and Petitioner Terminal have been identically aggrieved by various actions arising out of the same factual situation. The present case constitutes an effort to obtain the rights afforded charging parties in a proceeding under Section 10(l) of

the National Labor Relations Act that it was presumed the Court below had recognized in *Terminal Freight Handling Co.* v. *Solien*, 444 F.2d 699 (8th Cir., June 18, 1971), *pet. cert. pend.*, No. 71-609 ("Solien II"). Sears has already filed with this Court a motion to intervene in *Solien II* pointing out the similarities of the interests of Sears and Terminal in that case. In addition, Terminal filed on January 10, 1972 a Motion to Defer Ruling in *Solien II* emphasizing the related nature of that case to both the present case and *Sears, Roebuck & Co.* v. *Solien*, —— F.2d ——, 78 LRRM 2700 (8th Cir. No. 3, 1971), *pet. cert. pend.*, No. ——— ("Solien III"). The instant motion supplements these motions by ensuring that the same parties will be before the Court in each of the *Solien* cases.

More specifically, the present motion is founded on the following grounds:

1. The matters at issue in the instant case directly concern Sears as well as Terminal. The National Labor Relations Board consolidated the unfair labor practice charges of Terminal, which gave rise to the 10(l) District Court proceedings which underlies this action, with virtually identical charges that had been filed by Sears. The Board's petition for 10(l) injunctive relief, accordingly, was common to both Sears and Terminal, as was the settlement stipulation the District Court eventually approved and which is here at issue. The same District Court proceeding also formed the basis for Sears' Petition for Certiorari in *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F.2d 124 (8th Cir., 1971), *cert. den.*, No. 1588, O.T. 1971 ("Solien I"). In addition, a consolidated complaint issued in the unfair labor practice proceeding and a consolidated settlement agreement (see *Solien III*) in that case is still in the process of adjudication before the Board. Accordingly, Sears is so situated that, as a practical matter, the disposition of the present action will necessarily affect the

rights of Sears. Sears clearly has a common question of law and fact with the main action.

2. The subject matter of the instant case—the rights of the charging party in a Section 10(l) proceeding—is one which Sears, as well as other parties, have heretofore presented to this Court but which, because of mootness, has not yet been determined. See *Sears, Roebuck & Co.* v. *Local 419, Carpetlayers*, 397 U.S. 655 (1970), and *The Los Angeles Herald Examiner* v. *Kennedy*, 400 U.S. 3 (1970). Because of this continuing and substantial concern in the question here presented, intervention is appropriate to enable Sears to fully present its interests.

3. Granting the instant motion will in no way delay these proceedings, burden the Court or impair any adjudication of the rights of the parties. Sears does not intend to file any brief of its own in support of the present petition but, rather, would merely adopt the position which has already been advanced by Terminal.

4. Issuance of decision by the Court below does not preclude intervention at this time. The policies underlying intervention, as set forth in Rule 24 of the Federal Rules of Civil Procedure, may also be applicable in appellate courts. *United Automobile, Aerospace and Agricultural Implement Workers of America, Local 238* v. *Scofield*, 382 U.S. 205, n.10 (1965). In an appropriate case, such as the instant one, appellate intervention should be allowed. See, e.g., *McKenna* v. *Pan-American Petroleum Corporation*, 303 F.2d 778, 779 (5th Cir. 1962); *Wolpe* v. *Poretsky*, 144 F.2d 505, 507-8 (1st Cir. 1944); and Moore, Federal Practice (2d Ed.), Sec. 24.13. This Court recognized this principle in *NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967), where, on motion, intervention was granted to a party who had not participated in the proceedings before the Court of Appeals. Order of Court, dated May 2, 1966 in No. 52, O.T. 1966.

5. Counsel for Terminal has informed the undersigned he has no objection to the granting of this Motion.

WHEREFORE, Sears prays that it be permitted to intervene in this case.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1971

No. 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO., *Petitioners*,

v.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*.

BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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STATUTE:

Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq.*); 29 U.S.C. § 160(l) 2, 3, 4, 5, 6

MISCELLANEOUS:

"The Charging Party Before the NLRB: A Private Right in the Public Interest," 32 U. Chi. L. Rev. 786 (1965) 4

IN THE

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TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO., *Petitioners*,

v.

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and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*.

BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

I.

INTEREST OF THE AMICUS CURIAE.

This brief is filed on behalf of the Chamber of Commerce of the United States of America (herein, "the Chamber"), a federation with a membership of over 3,700 state and local chambers of commerce and trade associations, an underlying membership of about five

million business firms and individuals, and a direct business membership in excess of 32,000.[1]

This case poses important unresolved questions concerning the scope of procedural rights available to a charging party in a district court proceeding instituted by the Regional Director of the National Labor Relations Board (herein "the Board") to enjoin unlawful secondary boycott activity. This case is one of three now pending before the Court on petitions for writs of certiorari involving related aspects of such proceedings under Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq.*, hereafter referred to as "the Act"), 29 U.S.C. § 160(1). Commonly referred to as the *Solien* trilogy, the cases are *Solien II*,[2] *Solien III*[3] and the instant case *Solien IV*. As more fully explicated in the Chamber's brief *amicus curiae* filed in *Solien III*, this series of cases poses a network of important issues in an area of procedural rights under Section 10(1) to which this Court has never addressed itself. As these rights critically affect the ability of employer-charging parties to obtain adequate relief from secondary boycotts, the Chamber, its affiliates and members have a direct and vital interest in an authoritative resolution of those questions by the Court.

---

[1] This brief is filed with the written consent of all parties hereto pursuant to Supreme Court Rule 42(1).

[2] *Terminal Freight Handling Co. and Terminal Freight Cooperative Association* v. *Joseph H. Solien*, 444 F.2d 699 (8th Cir., 1971), pet. for cert. pending in No. 71-609.

[3] *Sears, Roebuck and Co., Terminal Freight Cooperative Association and Terminal Freight Handling Company* v. *Joseph H. Solien*, — F.2d —, 78 LRRM 2700 (8th Cir. 1971), pet. for cert. pending in 71-924.

Accordingly, the Chamber respectfully requests the Court to consider its views on the issues herein which are of serious national concern.

II.

REASONS FOR GRANTING THE WRIT.

In the instant case, the district court below denied the Petitioners, who were the charging parties, the right to be present at and participate in a critical stage of the proceedings which was determinative of the relief sought. Though that court had earlier recognized the right of the charging parties in the 10(1) action to participate in all proceedings, and indeed had accorded them a hearing on their objections to the settlement stipulation, it failed to grant such rights before approving a subsequent stipulation. This wholly anomalous result springs, we suggest, from the ambiguity which has too long existed as to the scope of the charging party's status in such a proceeding.

Although Section 10(1) of the Act provides that the charging party shall have the right "to appear by counsel and present any relevant testimony", there has been no interpretive gloss by the courts which further specify or define those rights. Thus, the Ninth Circuit in a pioneer case sustained the power of the district court to grant relief urged by a charging party, but to which the Regional Director of the Board objected. *Retail Clerks Union* v. *Food Employers Council, Inc.*, 351 F.2d 525 (1965). However, it observed at page 529, footnote 2:

> ". . . [W]e have not found it necessary to define the limits of the scope of participation to be permitted the charging parties. However, even if we agree with the Regional Director that it was the

charging parties who had procured the injunction, we cannot conclude that this would necessarily have constituted reversible error. The strict dichotomy between public and private interests which the Regional Director espouses in his effort to limit the participation of the charging parties has been subjected to well deserved criticism. In Comment, 'The Charging Party Before the NLRB: A Private Right In the Public Interest,' 33 U. Chi. L. Rev. 786 (1965), it is argued that in unfair labor practice proceedings before the NLRB the charging parties not only should, but do, have a right to a hearing when they object to a proposed settlement. * * * We agree, and find no inconsistency in allowing the 'public' interest to be represented by the 'private' charging parties when the representative of the NLRB is either unable or unwilling to do so."

Citing *Retail Clerks, supra*, with approval, this Court affirmed "that the public right (does not) exclude . . . recognition of parochial private interests . . ." and observed, "(r)ather, the two interblend in the intricate statutory scheme." *United Automobile Workers, etc. v. Scofield*, 382 U.S. 205, 218, 220 (1965). Thus, as it is generally recognized that participatory rights of some nature exist for charging parties under Section 10(1), it would be anomolous to leave those rights undefined without any indication as to when and in what manner they may be exercised.

The extent of these rights raises significant questions concerning the interpretation of an important federal statute. What little the courts have said about such rights is in utter conflict. The Tenth Circuit, in *Sears, Roebuck & Co. v. Carpet, Etc., Local Union No. 419*, 410 F. 2d 1148, at 1150 (1969), espoused the strictly literal view that the charging party is limited to ap-

pearing by counsel and presenting testimony, "no more and no less". The Eighth Circuit echoed the same rhetoric in *Solien* v. *Miscellaneous Drivers & Helpers Union, Local No. 610*, 440 F. 2d 424, 130 (1971), cert. den. 403 U.S. 905 (*Solien I*). However, the Ninth Circuit in *Retail Clerks Union* v. *Food Employer's Council, Inc., supra*, recognized that the statutory language of necessity implied more and created in the charging party the status, very nearly, if not wholly, of a full litigant. The Eighth Circuit also implicitly acknowledged as much in *Solien II, supra*, when it charged the district court with the responsibility of setting aside the Regional Director's proposed stipulation offered in lieu of an injunction should it fail to uphold the public interest. 444 F.2d 699 at 709. For the charging party is the only participant in a position to expose such infirmities to the court and therefore must have been thought by the court to have standing to object and argue its views, a status which goes well beyond that of merely being present and calling witnesses.

Moreover, the unresolved questions raised here daily confront litigants engaged in Section 10(1) proceedings. Without a resolution by the Court of these conflicts, the conduct of Section 10(1) actions will be plagued by disruptive uncertainty and the parties will have not even the most fundamental standards on which to base informed decisions concerning litigation and settlement.

Finally, the extended scope of the charging parties' rights advocated by the Petitioners are vital to vigorous and effective enforcement of the Act. In order for private interests to spur adequate enforcement when "the representative of the NLRB is either unable or unwilling to do so", *Retail Clerks, supra*, 351 F. 2d at

529, n. 2, they must have the same access to the Court as the other parties. Further, they must have access to the same evidentiary data as the Regional Director so as to evaluate the appropriateness of the relief sought. Finally, they should have direct access to the district court should the terms of any stipulation be violated, and the Regional Director's efforts thus proven futile, to obtain the relief guaranteed by Section 10(1) of the Act.

III.

CONCLUSION.

We believe these important questions warrant the consideration of the Court and accordingly urge that the petition for writ of certiorari be granted.

Respectfully submitted,

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v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT SOLIEN IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION, ET AL., PETITIONERS

v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT SOLIEN IN OPPOSITION

OPINIONS BELOW

Neither the court of appeals nor the district court rendered any opinion.

JURISDICTION

The order of the court of appeals was entered on December 17, 1971 (Pet. App. 148). The petition

for a writ of certiorari was filed on January 14, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

In a prior proceeding, the district court ruled that petitioners were not parties to an injunction suit brought by the Board's Regional Director under Section 10(l) of the National Labor Relations Act to enjoin certain allegedly illegal picketing; the court also approved, over petitioners' objections, a stipulation (in lieu of an injunction) under which the union agreed to stop the picketing pending the Board's administrative proceeding. Petitioners appealed the order denying them party status (which was affirmed by the court of appeals), but did not appeal the order approving the stipulation. The question presented is whether the district court properly denied petitioners' request, made some 14 months after the original orders, to reopen the stipulation and reconsider their objections thereto.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. 149-150.

STATEMENT

This case *(Solien IV)* is a further stage in the effort by Terminal and Sears, who filed unfair labor practice charges with respondent, the Board's Re-

gional Director, to upset a stipulation and settlement which respondent entered into with respect to those charges. The history of this controversy is more fully described in Respondent's Brief in Opposition in No. 71-924 *(Solien III)*. The portion of that history relevant to this case is as follows:

Respondent Regional Director, after determining that a complaint should issue upon the secondary boycott charges which Terminal and Sears had filed against Drivers Union Local 610 (the "Union"), petitioned the district court, pursuant to Section 10 (l) of the Act (29 U.S.C. 160(1)), for an injunction against the Union's picketing activity pending a final adjudication by the Board. Terminal and Sears moved to intervene in the 10(l) proceeding as full parties; the Regional Director opposed this motion. Thereafter, the Regional Director and the Union entered into a stipulation providing for a cessation of the Union's alleged unlawful picketing pending a final adjudication of the charges by the Board, and for the entry of a temporary injunction if the stipulation were violated (Pet. App. 15-20).[1]

Terminal and Sears filed objections to the stipulation on the ground, *inter alia*, that it did not permit them to apply for an injunction if the stipulation were violated. However, neither Terminal nor Sears contended that it lacked sufficient information to evaluate the adequacy of the stipulation. (Pet. App. 20-25.) After a hearing on the objections (Pet. App.

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[1] The Union's picketing had actually ceased by this time (Pet. App. 33, 37).

26-39), the district court denied the motions of Terminal and Sears to intervene as parties, and disapproved the proposed stipulation (Pet. App. 39-40). The stipulation was revised the next day, and the district court approved it (Pet. App. 41-42).[2]

Terminal and Sears appealed from the order denying them status as full parties in the proceeding, but did not appeal from the order approving the stipulation. On March 12, 1971, the court of appeals affirmed the former order. *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F. 2d 124 (C.A. 8), certiorari denied, 403 U.S. 905 *(Solien I)*.

On September 13, 1971, some 14 months after the district court had entered the orders detailed above, Terminal filed a motion with the district court to set aside or amend the stipulation which it had previously approved. Terminal renewed its earlier objection that the stipulation should have empowered it to seek an injunction independently of the Regional Director if the stipulation were violated.[3] For the first time, Terminal also asserted that it lacked sufficient information to determine whether the stipulation "constitutes a full and adequate remedy" for the Union's unlawful conduct, and that therefore it should be permitted to depose the Regional Director

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[2] The revised stipulation omitted a provision, contained in the original stipulation, which read (Pet. App. 17): "Nothing contained in this Stipulation shall be construed to make unlawful, where not otherwise unlawful, any primary picketing."

[3] There was no contention that the Union had ever resumed (see n. 1, *supra*) its alleged illegal picketing.

and to examine the Board's files (Pet. App. 43-50). The Regional Director and the Union opposed the motion on the grounds, *inter alia*, that it was untimely and that it was foreclosed by the earlier decision in *Solien I* that Terminal was not a full party in the proceeding (Pet. App. 52-55, 56-59).

The district court denied Terminal's motion (Pet. App. 139). The court of appeals summarily affirmed, ruling that "the questions presented for review by this appeal are so insubstantial as not to need further argument and said appeal is, in fact, frivolous and entirely without merit" (Pet. App. 142-146).

ARGUMENT

The only question presented by this petition is whether the district court exceeded its authority in refusing to entertain Terminal's motion to reopen and reconsider a stipulation which it had approved some 14 months earlier. Such an issue necessarily turns on the particular facts and thus does not warrant review by this Court. Moreover, as the court of appeals concluded in treating Terminal's appeal as frivolous, the district court was fully justified in declining to reconsider the stipulation. The district court had considered and rejected one of Terminal's objections earlier and no valid explanation was offered for the delay in raising the other objection; there was no showing that the Union, in the meantime, had resumed its picketing in violation of the stipulation; and, although Terminal had appealed from the district court's earlier order denying it

party status in the proceeding, it had not appealed from the order approving the stipulation.

As the court of appeals recognized in summarily affirming the district court, there is no merit to Terminal's contention (Pet. 9-14) that the decision in *Solien II*[4] granted to charging parties rights which were denied to them in *Solien I*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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National Labor Relations Board.

MARCH 1972.

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[4] *Terminal Freight Handling Co.* v. *Solien*, 444 F. 2d 699 (C.A. 8), petition for certiorari pending, No. 71-609.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and
TERMINAL FREIGHT HANDLING CO.,
Petitioners,

vs.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board
and
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610 Affiliated With the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF

In Opposition of Respondent Union

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IN THE

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TERMINAL FREIGHT COOPERATIVE ASSOCIATION and
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JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board
and
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610 Affiliated With the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF
In Opposition of Respondent Union

OPINIONS BELOW

The citations to the Opinions Below are adequately set forth in the Petition for Certiorari.

JURISDICTION

The jurisdictional requirements are adequately set forth in the Petition for Certiorari.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Where a Charging Party in an unfair labor practice case has been denied full party status or the right to intervene in 10 (l) injunction proceedings by a District Court, that Judgment was affirmed by a United States Court of Appeals, and Petition for Certiorari denied, does such Charging Party have standing to thereafter return to the same District Court and file a Motion to Amend or Rescind a stipulation entered into by a Regional Director and the respondent union to settle the 10 (l) litigation, said stipulation having been approved by the District Court prior to said first appeal.

2. Is such a motion timely filed if it is filed more than a year after the order approving such stipulation was entered by the District Court, and where such order was entered after Charging Party had made both oral and written objections to the stipulation as originally proposed and the stipulation as approved was altered to meet the principal objections.

STATUTES INVOLVED

Besides the statutes which Petitioner cites under the "Statutes Involved" section of its Petition for Certiorari, there is also involved Rule 59(e) of the Rules of Civil Procedure, printed as an Addendum to this Brief.

COUNTERSTATEMENT OF THE CASE

Because a large proportion of Petitioner's Statement of the Case in its Petition for Certiorari refers to matters before the National Labor Relations Board, its Regional Director and its General Counsel, which are completely irrelevant to the issues here involved, this Respondent makes this Counterstatement of the Case:

This constitutes the second Petition for Certiorari filed in this Court by Terminal Freight Handling Company and Terminal Freight Cooperative Association (hereafter collectively called "Terminal") arising from 10(l) proceedings before the United States District Court for the Eastern District of Missouri, instituted originally on June 29, 1970 (A. 1-8). In **Solien v. Miscellaneous Drivers and Helpers Union, Local No. 610**, 440 F.2d 124 (8th Cir., 1971), hereafter referred to as "Solien I", the Court of Appeals for the 8th Circuit Court affirmed an order of said District Court denying Terminal's motion to appear as a full party plaintiff or to intervene in said 10(l) proceedings.[1] This Court denied certiorari, 403 U.S. 905, and denied a rehearing ... U.S. ..., November 15, 1971.

In **Solien I**, Terminal and Sears filed motions to appear as full parties litigant or, in the alternative, to intervene in the 10 (l) proceedings. Both the Regional Director, a respondent herein, and Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent Union and hereafter called "Local 610" or the "Union", opposed those mo-

[1] The appeal and first Petition for Certiorari in **Solein I** was taken both by Terminal and by Sears, Roebuck and Company (hereafter called "Sears") but Sears elected not to participate in the subsequent proceedings before the District Court and 8th Circuit which led to Terminal's filing of the instant Petition for Certiorari (A. 43, footnote 1).

tions. On July 7, 1970 a hearing was had before the District Court at which all parties were afforded a full opportunity to state their respective positions, not only with respect to said motions to intervene or participate fully, but with respect to a Stipulation or settlement agreement which had been entered into between the Regional Director and Local 610, subject to the approval of the District Court, to dispose of said 10 (1) litigation (A. 26-39). In addition, on the same day, Sears and Terminal filed written objections to the proposed stipulation and to interdict the entry of said Stipulation (A. 20-25). The following day, July 8, the District Court entered his order denying Sears and Terminal the right to intervene as full parties, but permitting them to appear at all hearings, introduce evidence and file Briefs. In that same order, the District Court disapproved the Stipulation in the form presented (A. 39-40, 15-20). The next day, July 9, the Regional Director and Local 610 entered into a revised Stipulation which the District Court then approved, copies of both the Order and the Stipulation being mailed to attorneys for Sears and Terminal (A. 41-2). The Stipulation, as approved, generally provided that Local 610 agreed not to engage in certain picketing at locations therein described for purposes proscribed by the Act; that if the Regional Director should later file an affidavit that he had found probable cause to believe that the Union had violated said Stipulation, the District Court could "forthwith" issue a temporary injunction in the form attached to the Stipulation.[2] At no time prior to or as part of its appeal in **Solien I** did Terminal (or for that matter, did Sears) contend that they lacked sufficient information to

[2] The Stipulation which the District Court rejected had provided for a 24-hour notice before the temporary injunction could be entered (A. 17). In addition, para. 5 of the original stipulation, to which Sears and Terminal had objected at the July 7 hearing (A. 28-38) was stricken from the stipulation as approved. See addendum to this brief.

evaluate the Stipulation, as it contended for the first time in its denied motion which led to the instant petition for certiorari.

In **Solien I,** Terminal and Sears raised no issues other than whether they, as Charging Parties in National Labor Relations Board unfair labor practice proceedings, had the right to the status of "parties" or the right to intervene in 10 (l) proceedings. As noted, the Eighth Court in **Solien I** held they did not and this Court denied certiorari. While Terminal's and Sear's Petition for Rehearing in **Solien I** was pending in this Court, Terminal went back to the District Court and filed on September 13, 1971 what was termed a Motion to Accept and Consider Their Objections to the Stipulation Previously Approved by the Court Herein and For an Order Rescinding or Amending Such Stipulation (A. 43-51). Thereafter, the Union filed a Statement in Opposition to said Motion (A. 52-55), and the Regional Director filed his Reply Brief in Opposition thereto (A. 56-60). On October 12, 1971 the District Court issued its Order denying said Motion (A. 139), and Terminal thereafter filed its Appeal to the Court of Appeals for the Eighth Circuit (A. 140). On November 19, 1971 the Union filed with the Eighth Circuit the Union's Motion to Affirm Order of U. S. District Court or, in the Alternative, to Dismiss Appeal (A. 142-145), and on December 3, 1971 the Regional Director filed a Motion to Dismiss Appeal with the same Court (A. 146-7). On December 17, 1971 the Eighth Circuit granted the Union's Motion to Affirm the Judgment of the District Court (A. 148), and Terminal then filed its Petition for Certiorari.

ARGUMENT

I. Terminal Lacked Standing to Prosecute Its Appeal to the Court of Appeals

In discussing the issues here involved, it should be noted at the outset that Terminal has, as it did in **Solien I**, included in the Appendix and mentioned in its Petition for Certiorari here innumerable motions, orders, letters, documents and other evidence which deals solely with the underlying unfair labor practice case before the National Labor Relations Board or its General Counsel, and which are completely irrelevant to any of the issues here involved. The issues here involved relate solely to 10 (l) injunction proceedings before the District Court. Section 10 (l) proceedings are not to provide remedies for the charged unfair labor practices as Terminal suggested in its Motion to Accept Objections to the Stipulation (A. 43-44) and in its instant Petition for Certiorari (Pet., pp. 8, 10), but are designed to provide interim relief pending final Board disposition of these charges, **Solien I**, 440 F. 2d at 128-129.

In **Solien I**, the Eighth Circuit denied Terminal's right to intervene or to have full party status in 10 (l) proceedings. In doing so, it held that "No court that has considered the question of the charging party's independent standing to seek appellate review of an adverse § 10 (l) decision has accorded the charging party this right. (citing cases). Appellants' intervention argument based on their alleged right to appellate review of the district court's § 10 (l) decision must fall" (440 F.2d at 131-132). The Eighth Circuit in **Solien I** expressly rejected the same contention that Terminal makes in the current appeal—that it has standing to seek review of the district court's order approving the settlement stipulation on the ground that such stipulation was not an adequate

substitute for injunctive relief. **Solien I.** 440 F. 2d at 132. This court, as noted, denied certiorari in **Solien I.**

In an effort to avoid the impact of **Solien I** and "come through the back door" Terminal went back to the District Court and filed a Motion to Rescind or Amend the stipulation approved on July 8, 1970. In substance, that Motion sought to reactivate the Section 10 (l) proceedings and to obtain new or additional injunctive relief. In denying Terminal the right to intervene in **Solien I**, the Eighth Circuit concluded that charging parties have no right to maintain a claim for the relief sought (440 F. 2d at 132). In **Terminal Freight Handling Company v. Solien**, 444 F. 2d 699, reh. denied 8/13/71, pet. for cert. pending and hereafter called **"Solien II"**, the Eighth Court held that the policy there laid down with respect to the duty of Regional Directors under 10 (l) "neither permits the charging party to initiate an injunction suit nor grants it party status in the injunction proceeding" and "is in no way inconsistent with our decision in **Solien I**" (444 F. 2d at 709). It is submitted, therefore, that Terminal had no status to prosecute its appeal, and Local 610 simply cannot understand Terminal's contention in its Petition for Certiorari that **Solien II** granted such a right.

II. Assuming Arguendo That Terminal Had Standing to Appeal, the Motion to Rescind or Modify the Stipulation Was Not Timely Filed.

The District Court's order of July 9, 1970 approving the Stipulation was in lieu of injunction, was that Court's final decision in the 10 (l) proceeding, and constituted a reviewable order under Sections 1291 and 1292 of Title 28 U.S.C. In **Solien I**, Terminal and Sears chose to appeal only from the denial by the District Court of their motions to intervene or be given full party status. Terminal and Sears failed to timely file within ten (10) days a

motion to alter or amend the July 9, 1970 order and judgment of the District Court as required by Rule 59 (e) of the Rules of Civil Procedure.[3] The District Court would have had no authority to entertain such a motion, and, accordingly, Terminal's Appeal to the Eighth Circuit presented nothing for review. **Gray v. Dukedom Bank**, 216 F. 2d 107, 109-110 (6th Cir. 1954); **Weir v. United States**, 339 F. 2d 82, 83-84 (8th Cir. 1964).[4]

III. In Any Event Terminal's Motion Presented No Basis for Rescinding or Setting Aside the Stipulation.

Apart from Terminal's lack of standing to prosecute this appeal and its fatal failure to timely file its motion to amend or alter the Order approving the settlement stipulation, the simple fact is that its said Motion presented no ground for rescinding or amending the stipulation approved by the District Court on July 9, 1970. On that date, all picketing had ceased and the primary dispute had been settled. The Regional Director elected to accept a Stipulation in lieu of proceeding with the hearing on the order to show cause.

As noted under footnote 2 of this brief, infra, the District Court rejected the original stipulation and then, after significant changes had been made in its terms, including some which met specific objections which Terminal and Sears had made, the District Court approved the stipulation as amended on July 9, 1970. **Solien II** specifically approved the practice of negotiating settlement in 10 (l) proceedings in lieu of injunctive relief, and approval thereof by the Court if it believes, as the District Court did here, that the stipulation or settlement adequately

[3] Reprinted as an addendum to this brief.

[4] While **Weir** involved failure to timely file a Motion for a New Trial under Rule 59 (b), the principle is the same.

protects the public interest.[5] **Solien II**, 444 F. 2d at 709. Terminal seemingly does not understand the purpose of 10 (l) proceedings. The purpose is not, as Terminal contended in its most recently denied motion and as it argues in its Brief, to have 10 (l) constitute a remedy for the violations of law which may be uncovered by a Regional Director in his investigation of unfair labor practices. **Solien I** pointed out that 10 (l) proceedings are merely ancillary to the main unfair labor practice proceedings; that the District Court's function therein is limited to determining whether there is reasonable cause to believe that the unfair labor practice charge will be sustained before the Board and whether temporary injunctive relief would be just and proper under the circumstances; that the findings of the District Court in 10 (l) proceedings are not binding on the Board when it decides the case on its merits (440 F. 2d at 128-9). In **Terminal Freight Co-op Assn. v. NLRB**, 447 F. 2d 1099 (3rd Cir. 1971), Appellant here being also the Appellant there, the Court of Appeals for the Third Circuit in discussing 10 (l) proceedings stated (447 F. 2d 1102):

> "The purpose of this relief is to maintain the status quo pending final adjudication by the Board with respect to the unfair labor charge (citing cases). The court in determining if it should grant injunctive relief is not called upon to decide whether a violation of the Act has been committed. The ultimate determination of this question is reserved exclusively for the National Labor Relations Board. The district court in passing upon the relief requested, decides merely whether there was reasonable cause to believe that a violation of the Act has been committed and

[5] Indeed, the Eighth Circuit held that the Regional Director need not even file a petition for 10 (l) relief if he can, through negotiation, obtain an agreement from a charged Union to cease conduct which the Regional Director believes is violative of the Act. **Solien II**, 444 F. 2d at 708-9.

whether the sought for equitable relief is the proper remedy (citing cases)."

In the exercise of his sound discretion and after the petition for 10 (l) relief was filed, the Regional Director here determined that the matter should be settled through stipulation. Terminal and Sears objected. The District Court considered those objections, and refused to approve the stipulation in the form presented. Changes were then made and a revised form of stipulation meeting some of the objections posed by Terminal and Sears was presented to the District Court who then approved it. The picketing was ended, the strike was over. The stipulation preserved the status quo. In it the Union agreed that it would not engage in picketing for proscribed purposes, and that if it violated its agreement the District Court could forthwith issue an injunction without notice upon the mere filing of an affidavit by the Regional Director that the stipulation has been violated. That procedure was approved in **Solien II**. There has been no picketing since prior to the filing of the 10 (l) petition, in June, 1970. The settlement stipulation has achieved everything that an injunction could have achieved if issued. Indeed, the form of injunction attached to the Stipulation and which would be issued if said Stipulation were violated is in the precise terms as contained in the prayer of the petition for 10 (l) injunction (A. 6-7, 18-20).[6]

In summary, Terminal's Motion, the denial of which was the basis for its appeal to the Eighth Circuit, raised two points: (1) That an evidentiary hearing was necessary in order to determine if the stipulation "remedies

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[6] The form of injunction referred to as Exhibit A in the Stipulation as approved (A. 41) is not re-printed in the Appendix but was in the identical language as printed A. 18-20. Also, the Stipulation as approved which appears A. 41-4 its an entire page, but the complete stipulation as approved re-printed as an addendum to this brief.

fully the violations of law to which it (Terminal)" claims it was subjected. As noted, that is not the purpose of 10 (l); and (2) that the stipulation does not provide the right of Terminal to move for an injunction should the stipulation be violated. **Solien I** clearly established that charging parties have no "right to maintain a claim for the relief sought". (440 F. 2d at 132).

Finally, on this point, it should be noted that the same objections which Terminal raised in its denied Motion, and in its instant Petition for Certiorari, to the Stipulation were raised in its Petition for Certiorari in **Solien I**—except that there it used these objections as ground for its alleged claim of party status or to intervene (Pet. Cert. **Solien I**, p. 32). In its instant petition it has added two authorities not cited in its petition in **Solien I**, to support its argument that it is entitled to an evidentiary hearing, namely **Leeds & Northrup v. NLRB**, 357 F. 2d 527 (3rd Cir. 1966), and **Concrete Materials of Georgia, Inc. v. NLRB**, ... F. 2d ..., 76 LRRM 2832 (5th Cir., 1971). Of course, neither of those cases supports Terminal's position. Neither dealt with 10 (l) proceedings, but with proceedings before the Board. The Third Circuit in **Terminal Freight Cooperative Ass'n v. NLRB**, supra, and **Solien I**, as noted above, points out the difference in purposes and procedures which Terminal stubbornly refuses to recognize. It is submitted that the Eighth Circuit properly summarily affirmed the District Court's order denying Terminal's Motion, since the questions presented for review by Terminal in its appeal were patently "so insubstantial as not to need further argument" (Rule 8, Rules of the U. S. Court of Appeals for the Eighth Circuit).[7]

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[7] Printed as an Addendum to this Brief.

CONCLUSION

For the reasons set out above, Respondent Union respectfully submits that the Petition for Certiorari should be denied.

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APPENDIX

Rule 59 (e) of Federal Rules of Civil Procedure provides in pertinent part:

"**Rule 59—New Trials; Amendments of Judgments**

* * * * * * * *

(e) **Motion to Alter or Amend a Judgment.** A Motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

* * * * * * * *

Rule 8 of the Rules of the U. S. Court of Appeals for the Eighth Circuit provides in pertinent part:

"**Rule 8. Motion to Dismiss or Affirm**

Within fifteen days after the appeal has been docketed in this court, the appellee may file a motion to dismiss or a motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss. * * *

* * * * * * *

(b) A motion to affirm shall be based on the ground that the questions presented for review are so unsubstantial as not to need further argument."

* * * * * * * *

Stipulation as approved by U. S. District Court on July 9, 1970. (This stipulation, as printed in the Appendix, A. 41-42, omitted portions thereof on A. 41 as clearly indicated in paragraph 1 on A. 41):

STIPULATION

(Filed July 9, 1970)

(Caption Omitted)

It Is Hereby Stipulated and Agreed by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that:

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Cooperative Association and Terminal Freight Handling Co. and May Department Stores Company in Case No. 14-CC-604, Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent), its officers, representatives, agents, servants, employees and all members and persons acting in concert or participation with it will not:

(a) Picket at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picket at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the pro-

visions of paragraph 1 of this Stipulation, the Court may forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection, Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317(2) now pending before this Court.

Dated at St. Louis, Missouri, this 9th day of July 1970.

/s/ JOHN S. STEVENS
JOHN S. STEVENS
Attorney for Petitioner

/s/ (Illegible)
Attorney for Respondent

Approved and So Ordered this 9th day of July, 1970.

JAMES H. MEREDITH
United States District Judge

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IN THE

In the Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U. S.
FILED
MAR 17 1972
MICHAEL RODAK, JR., CLERK

No. 71-925

SEARS, ROEBUCK & CO.
and
TERMINAL FREIGHT COOPERATIVE ASSOCIATION
and
TERMINAL FREIGHT HANDLING CO.,
Petitioners,

v.

JOSEPH S. H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, and Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with the International Brotherhood Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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In the Supreme Court of the United States

OCTOBER TERM, 1971

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and

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REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI[1]

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[1] Although the petition herein was originally filed by Terminal Freight Cooperative Association and Terminal Freight Handling Co., Sears Roebuck & Co. subsequently filed an unopposed motion to intervene. The caption of this case reflects Sears' desire to participate as co-petitioner herein.

Just as the four *Solien* cases now pending in this Court are interrelated[2] (the instant case bearing the designation of *Solien IV*)—so also has the General Counsel of the National Labor Relations Board responded to the Petition for Writ of Certiorari in each of those cases in a similar fashion. The General Counsel has in each instance sought to focus attention not on the important question of general applicability which have been presented for resolution, but on his version of the facts of the cases. In this fashion, the General Counsel seeks to avoid an ultimate judicial clarification of the related issues which have been raised in favor of perpetuating the present and unnecessary confusion which permeates the area.[3]

1. The General Counsel asserts that the Objections to the Stipulation-in-lieu of injunction which were filed in the district court and which have given rise to the issues presented here were ultimately filed. That assertion assumes that no intervening events occurred which rendered those objections timely and appropriate. The entire thrust of the Petitioners' argument, however, is that the issuance by the Eighth Circuit of its decision in *Solien II* constituted such an intervening event. The General Counsel's assumption, therefore, constitutes an attempted resolution of the issues presented without argument.

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[2] *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F.2d 124 (CA 8, 1971), Pet. for Rehearing pending; (No. 1588; *Solien I*); *Terminal Freight Handling Co., et al.* v. *Solien*, 444 F.2d 699 (CA 8, 1971) (No. 71-609; *Solien II*); *Sears Roebuck and Co., et al.* v. *Solien*, 450 F.2d 353 (CA 8, 1971) (No. 71-924; *Solien III*); *Terminal Freight Cooperative Association, et al.* v. *Solien*, 447 F.2d 1099 (CA 8, 1971) (No. 71-925; *Solien IV*). The nature of the interrelationship of those cases is described in the second Petition for Rehearing in *Solien I*, pp. 2-4.

[3] The nature of the General Counsel's Opposition to this Court's consideration of the issues presented in the *Solien* cases is described in more detail in the Reply to Opposition to Petition for Writ of Certiorari in *Solien III*.

Solien I held that charging parties do not constitute "parties" in proceedings under Section 10(l) of the National Labor Relations Act. The General Counsel's Opposition herein (p. 5) interprets that holding to "foreclose" the charging parties from protesting to the district court that the relief afforded by the stipulation was inadequate to cure the unlawful conduct to which it had been subjected and that injunctive relief should be granted. Presumably, the General Counsel believed that, absent "party" status, the beneficiary of statutorily afforded relief may not protest to the Court that the compromise relief negotiated by the General Counsel is less than Congress intended or provided.

Whatever merit such an interpretation of the statute might have had after *Solien I*, the situation changed after the issuance of *Solien II*, which provided:

> "If a settlement in lieu of injunctive relief negotiated by the regional director fails to adequately protect the public interest, the district court can override the settlement and grant injunctive relief."

It would appear that the General Counsel's interpretation of the rights flowing to charging parties under Section 10(l) is expressly contradicted by *Solien II*. By acknowledging the district court's authority to override inadequate settlements, the court necessarily grants to the charging parties the standing to so petition to the district court. Neither the union, the beneficiary of the alleged inadequacy, nor the General Counsel who approved it and urged it on the court could be expected to protest the terms of their own agreed settlement. Only the charging parties would do so. Thus, by necessary implication, *Solien II* granted standing to the charging parties to file the Objections which the General Counsel asserts here to be "foreclosed" by *Solien I*.

Accordingly, this case raises the important question of the relationship of "party" status to the existence of

standing to protest violations of statutory entitlement, and not merely the factual question as to whether the Objections were timely filed, given the fourteen months' lapse of time after *Solien I*. It presents for resolution apparently conflicting appellate decisions which must be harmonized in order to present recurring conflict among opposing litigants in proceedings arising under Section 10(l).

2. The General Counsel's suggestion that Petitioners might have sought review of the district court's order approving the Stipulation as well as its order denying "party" status is not a consideration which should affect the Court's willingness to resolve the important issues raised in this case. Had the court below ruled favorably to petitioners on the party status question in *Solien I*, access would thereby have been afforded to the district court to achieve a modification of the terms of the Stipulation in accordance with Petitioners' needs; that was Petitioners' intention and design. While the Court below did not render such a favorable ruling in *Solien I*, it subsequently did so in a less direct fashion in *Solien II*. The latter consideration, together with the fact that the Stipulation remains in force to this date, and continues to constitute the charging parties' sole protection against a resumption of the union's unlawful boycott, legitimizes petitioners' continuing access to the district court.

More fundamentally, however, the four *Solien* cases constitute a mosaic of the problems presented in identifying charging parties' proper participatory role under the National Labor Relations Act. The instant case constitutes an important aspect of the total picture. It should therefore be considered in order that the Court may have a more encompassing view of the nature of the problems which exist and the range of the consequences of any decision the Court may render.

3. The General Counsel's description of the rights claimed by Petitioners, as charging parties under Sec-

tion 10(l), contains two misstatements which should be clarified. First, Petitioners do not assert their unqualified rights to examine the Board's files in order to secure information by which to evaluate the merits of any proposed Stipulation. Rather, the narrower and qualified right asserted is described in the Petition for Writ of Certiorari herein, at p. 17. Second, Petitioners do not claim a right to apply unilaterally for injunctive relief in the absence of a pending injunction petition filed by the Regional Director and do not object to the Stipulation approved by the district court herein because it fails to grant such a right (Opp. Cert., p. 3). Petitioners recognize that under the scheme of the National Labor Relations Act and in view of the prohibitions of the Norris LaGuardia Act, 29 U.S.C. § 107, only the Board's agents may institute proceedings for injunctive relief. However, once the injunction petition has been filed, and while it remains pending, Petitioners have the right to support it and urge its success even where the Board's agents subsequently determine to seek lesser relief. *Solien II; Retail Clerks Union, Local 137* v. *Food Employers Council, Inc.*, 351 F.2d 525 (CA 9, 1965).

Contrary to the General Counsel's assertion in his Opposition (at p. 5) that the resolution of the claim of rights which is raised in this case "necessarily turns on the particular facts and thus does not warrant review by this Court", such claims involve disputed interpreta-

tions of Congressional intent which should be adjudicated.

Respectfully submitted,

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MARCH 16, 1972